TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 59

NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

FILED DECEMBER 21, 1956
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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON NORTHERN DIVISION

Civil No. .....

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

COMPLAINT—Filed May 26, 1949

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief as follows:

I

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, in order to prevent and restrain violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The alleged unlawful acts and violations hereinafter described have been conceived, in part, and have been carried out and made effective, and are being carried out and made effective in part within the Western District [fol. 2] of Washington, Northern Division, and many of the unlawful acts pursuant thereto have been performed

and are being performed by the defendants and their respective representatives within the Western District of Washington, Northern Division. Each of the defendants has offices, transacts business, and is found within the Western District of Washington, Northern Division. The interstate trade and commerce as hereinafter described are carried on in part within the Western District of Washington, Northern Division.

II

Definition of Terms

3. The term "Northern Pacific Railroad Owned Lands," as used herein, means any and all lands or interests in lands which are owned or leased by the Northern Pacific Railway Company, its subsidiaries and predecessors, including timber lands, mineral bearing lands, oil and gas lands, coal and clay lands, grazing lands, and industrial sites.

4. The term "Northern Pacific Railroad Controlled Lands," as used herein, means any and all lands or real estate formerly owned, or whether ever owned, by the Northern Pacific Railroad Company which are encumbered with traffic clauses.

5. The term "traffic clause," as used herein, means an agreement relating to the sale, lease, or use of Northern Pacific owned or Northern Pacific controlled lands, under the terms of which the grantee is required to ship or have shipped over the lines of the Northern Pacific Railway Company any and all products of whatever nature coming [fol. 3] from Northern Pacific owned and Northern Pacific controlled lands.

6. The term "Controlled Products," as used herein, shall mean products taken from, or raised upon, or manufactured upon Northern Pacific owned or Northern Pacific controlled lands, as well as incoming products shipped to such lands from points located outside such lands.

III

Description of Defendants

7. Northern Pacific Railway Company (referred to hereinafter as Northern Pacific) is hereby made a defendant herein. It is a corporation organized under the laws of the State of Wisconsin on March 16, 1870, under the name of Superior and St. Croix Railroad Company. Its name was changed to Northern Pacific Railway Company on June 10, 1896, when it acquired the properties of the then bankrupt Northern Pacific Railroad Company, which was chartered by a special act of Congress (13 Stat. 365) on July 2, 1864.

8. Northwestern Improvement Company is hereby made a defendant herein. It is a Delaware corporation which, in 1942, became the successor in interest to a wholly-owned subsidiary of Northern Pacific which was incorporated in New Jersey on October 19, 1897, under the name of Northwestern Improvement Company, for the purpose of acquiring certain properties of the Railroad. On September 25, 1942, the property and assets of the New Jersey corporation were transferred to the Absaroka Oil Development Company, a wholly-owned subsidiary of defendant, Northern Pacific, incorporated under [fol. 4] the laws of the State of Delaware. On that date, the name of the Absaroka Oil Development Company was changed to Northwestern Improvement Company. Defendant Northwestern Improvement Company is a wholly-owned subsidiary of defendant Northern Pacific.

IV

Nature of Interstate Trade and Commerce Involved

9. Northern Pacific Railroad Company, the predecessor of defendant Northern Pacific Railway Company, was a land grant railroad. By Act of Congress of July 2, 1864 (13 Stat. 365) it was chartered to construct a railroad from Lake Superior to Puget Sound, with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made by the Federal Gov-

ernment of every alternate section of public land, not mineral, in the amount of twenty sections per mile on each side of the railroad line, through territories, and ten sections per mile through States. In the event some of this land should be found to have been granted already, or sold, or occupied, the company was privileged to select in lieu thereof alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad was given the privilege of selecting land suitable for agricultural purposes provided land so selected was located within fifty miles of the Railroad line.

10. By the Act of Congress of May 31, 1870 (16 Stat. 378) the Northern Pacific Railroad Company was authorized to construct the mail line by way of the Columbia River to Portland, Oregon, and a branch across the Cascade Mountains to Puget Sound. By act of Congress in 1869 (15 Stat. 346) the Northern Pacific Railroad Company was authorized [fol. 5] to construct a line between Portland, Oregon, and Puget Sound. This authorization provided no land grant. However, the Act of Congress of May 31, 1870, made a grant of land to the Railroad in connection with the construction of the line between Portland, Oregon, and Puget Sound upon the same terms as those contained in the original grant of July 2, 1864. In addition to the land grants already described, the Acts of 1864 and 1870 granted the Railroad a right-of-way two hundred feet in width on each side of the definite location of the railroad line.

11. The Northern Pacific Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls approximately 6,900 miles of railroad extending from Minneapolis and St. Paul to the Pacific Northwest, passing through the northern tier of States bordering on Canada. States furnished with transportation services and facilities by Northern Pacific include Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon. The lines of the Northern Pacific substantially parallel the lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

12. Under the land grants made by the Acts of Congress of 1864 and 1870, Northern Pacific acquired approximately 40,000,000 acres of land in the States in which its lines now operate. Defendant Northern Pacific, or its predecessors, have sold approximately 36,000,000 acres of such land. The lands sold were sold subject to a reservation in the vendor, its successors and assigns forever, of all minerals of any nature whatsoever, together with the right to use [fol. 6] such of the surface as might be necessary for exploring and mining or otherwise extracting and carrying away the same. Defendant Northern Pacific and defendant Northwestern Improvement Company still own approximately 4,000,000 acres of such lands. The lands so sold by defendant and its predecessors, and the lands still owned by defendants contain timber, iron ore, coal, oil, clay, and other natural resources. In addition, a part of such lands have been used as grazing lands and a part devoted to industrial developments of various kinds. In addition to the sale of lands, defendants are engaged in the sale of rights to use certain of said lands still owned by them for grazing, for the location of industrial sites, and in the sale of rights to remove therefrom timber, oil, gas, metals, clay, coal, other minerals, and other products. Defendants have reserved mineral rights in a substantial part of the lands sold by them.

13. A substantial part of the approximately 36,000,000 acres of land sold by defendants has been sold subject to so-called "traffic clauses" under the terms of which the grantee agrees to ship or to have shipped over the lines of Northern Pacific any and all products and commodities coming from or delivered to such lands. In addition, a substantial part of the remaining 4,000,000 acres still owned by defendants is leased for various purposes to others. These leases are also subject to the same type of "traffic clauses" as the land which has been sold.

14. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber,

lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, [fol. 7] metals, minerals, animals and animal products, and a variety of manufactured products. Many products, including a great variety of manufactured products, machinery, foodstuffs, mining and lumbering equipment and supplies, are shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located.

15. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce. Many of the commodities and products refered to hereinbefore are transported in interstate commerce by defendant Northern Pacific. Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. Such carriers are in competition with, or, but for the illegal conduct hereinafter described, would be in active competition with defendant Northern Pacific for the transportation of said commodities and products.

V

Offenses Charged

16. For many years prior to the date of the filing of this Complaint, the defendants, each well knowing all the matters and things hereinbefore alleged, and continuing thereafter up to and including the date of the filing of this Complaint, have been and are now engaged in the making of contracts and in a conspiracy to make contracts to restrain [fol. 8] unreasonably, and have conspired and combined to monopolize and have attempted to monopolize the interstate trade and commerce involved in the business of transporting commodities and products shipped from and in transporting commodities and products shipped to persons and concerns occupying both Northern Pacific Railroad owned lands and Northern Pacific controlled lands, all in violation

of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended (15 U.S.C.A. Secs. 1 and 2), commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for is granted.

17. The aforesaid contracts in restraint of trade, the combination and conspiracy in restraint of trade, and the monopolization and attempts to monopolize said interstate trade and commerce, have consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants

a. Require grantees of rights in or to the use of Northern Pacific owned and Northern Pacific controlled lands to agree to supply railroad traffic to Northern Pacific;

b. Require said grantees, under the terms of traffic clauses, to agree to do, and to do, the following:

(1) To ship or cause to be shipped over the lines of Northern Pacific commodities raised or produced on or coming from Northern Pacific owned or controlled lands;

[fol. 9] (2) To ship or cause to be shipped over the lines of Northern Pacific, products manufactured in whole or in part from commodities raised or produced or coming from Northern Pacific owned or controlled lands;

(3) To ship or cause to be shipped over the lines of Northern Pacific, commodities raised or produced on or coming from lands other than Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(4) To ship or cause to be shipped over the lines of Northern Pacific products manufactured in whole or in part from commodities raised or produced on or coming from lands other than

Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(5) To ship or cause to be shipped over the lines of Northern Pacific products and commodities shipped to the grantees;

(6) To offer to sell or otherwise dispose of and to sell or otherwise dispose of commodities raised or produced on or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which the grantees have a right or interest and products manufactured in whole or in part from [fol. 10] said commodities, to vendees designated by defendants;

(7) To ship or cause to be shipped over the lines of Northern Pacific an equivalent amount of traffic through the transportation over Northern Pacific lines of commodities originating from other sources, in lieu of commodities raised or produced from Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(8) To route shipments of commodities and products over the lines of Northern Pacific in such a way as to give Northern Pacific the longest possible haul;

(9) To obtain from vendees of commodities raised or produced or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which such grantees have a right or interest and products manufactured in whole or in part from said products, an agreement that said vendees will ship over the lines of Northern Pacific [fol. 11] said commodities and products, and products manufactured by said vendees in whole or in part therefrom;

(10) To induce and persuade vendees of commodities raised or produced or coming from Northern

Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which said grantees have a right or interest, and products manufactured in whole or in part therefrom, to ship over the lines of Northern Pacific said commodities and products and products manufactured by said vendees in whole or in part therefrom, or, in lieu thereof, to present to Northern Pacific an equivalent amount of traffic by the transportation of other commodities over the lines of Northern Pacific;

(11) To supply commodities to those vendees who are willing to ship their products over the lines of Northern Pacific;

(12) To keep records and allow defendants access thereto for the purpose of enabling defendants to police and enforce the foregoing requirements set out in the various sub-divisions of sub-paragraph (b) of this paragraph.

c. Threaten to refuse and refuse to grant rights in or to the use of Northern Pacific owned lands to grantees who refuse to comply with some or all of the requirements set forth in sub-paragraph (b) of this paragraph;

d. Agree with manufacturers who consent to ship their products over the lines of Northern Pacific that defendants will direct or cause grantees of rights in or to the use of Northern Pacific owned and controlled
[fol. 12] lands to supply commodities to such manufacturers for processing or manufacture.

VI

Effects of Violations

The aforesaid contracts, combination and conspiracy to restrain trade, and the monopolization and attempted monopolization by defendants have had the following effects as intended by defendants:

1. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on Northern Pacific owned and controlled lands;

2. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on lands other than Northern Pacific owned and controlled lands in which grantees of Northern Pacific owned and controlled lands have a right or interest;

3. Defendants have secured a monopoly control over the sale or other disposition of substantial quantities of commodities and products which they do not own;

4. Grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of a free choice as to both the means of transportation to be used and of markets in which to sell commodities and products coming from such lands;

5. Grantees of rights and interests in Northern Pacific owned and controlled lands who have interests and rights in lands other than Northern Pacific owned
[fol. 13] and controlled lands have been deprived of a free choice as to both the means of transportation to be used as well as the markets in which to sell commodities and products coming from lands other than Northern Pacific owned and controlled lands;

6. Subsequent vendees of products and commodities sold by grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of the right to dispose of such products to buyers in markets of their own selection as well as of the right to select their means of transportation for such products;

7. Other buyers and potential buyers of said products and commodities who buy and sell in markets which are not served by the lines of the Northern Pacific are deprived of the right to purchase such products and commodities in a free market;

8. Competing railroads and competing motor truck and steamship lines have been deprived of an opportunity to compete in an open market for the business of transporting products and commodities coming from Northern Pacific owned and controlled lands as well as lands other than Northern Pacific owned and controlled lands in which grantees of defendants have rights or interests.

[fol. 14]

VII

Prayer

Wherefore, the Plaintiff prays:

1. That the Court adjudge and decree that each of the contracts, as well as the combination and conspiracy in restraint of interstate trade and commerce, and the monopolization and attempts to monopolize the interstate trade and commerce described herein, are illegal and are in violation of Sections 1 and 2 of the Sherman Act.

2. That each and every one of the contracts under the terms of which the grantees of Northern Pacific owned and controlled lands are required to ship via Northern Pacific lines, products coming from and products shipped to such lands, as well as products coming from or shipped to lands other than Northern Pacific owned and controlled lands, be cancelled forthwith.

3. That defendants be perpetually enjoined and restrained from entering into any contract, agreement, or understanding with grantees of Northern Pacific owned or controlled lands under the terms of which such grantees are deprived in any way of either a free choice of transportation medium or of markets for products coming from or shipped to Northern Pacific owned or controlled lands, or from lands other than Northern Pacific owned or controlled lands in which grantees of Northern Pacific owned and controlled lands have an interest.

4. That the plaintiff recover the costs and disbursements of this suit.

5. That plaintiff shall have such other and further relief as the Court shall deem just and proper.

[fol. 15] Philip Marcus, Special Assistant to the Attorney General.
Charles L. Whittinghill, Aute L. Carr, Special Attorneys.

Tom C. Clark, Attorney General, Herbert A. Bergson, Assistant Attorney General, Holmes Baldridge, Special Assistant to the Attorney General.
J. Charles Dennis, United States Attorney.

[fol. 16] [File endorsement omitted]

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil Action No. 2277

[Title omitted]

ANSWER OF DEFENDANTS, NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY—Filed November 22, 1949

Come now defendants, Northern Pacific Railway Company and Northwestern Improvement Company, and make this answer to plaintiff's complaint:

First Defense

1. Answering paragraphs 1 and 2 of the complaint, defendants admit that each of them has offices, transacts business and is found within the Western District of Washington, Northern Division, and deny the remaining averments thereof.

2. Answering paragraphs 3, 4, 5 and 6 of said complaint, defendants admit that in its complaint plaintiff has used the terms mentioned in said paragraphs as therein defined, but deny that said terms as so defined are appropriate to describe either past or present land holdings of defendants or either of them, the products thereof, or any agreements made by defendants or either of them with respect thereto.

3. Answering paragraphs 7 and 8 of the complaint, defendants admit the averments thereof except for minor [fol. 17] inaccuracies in certain of the dates therein set forth.

4. Answering paragraphs 9 and 10 of the complaint, defendants admit that plaintiff has pleaded with substantial accuracy certain of the provisions of said Act of July 2, 1864, the Joint Resolution of April 10, 1869, and the Joint Resolution of May 31, 1870, except that it has failed to state that the right of way therein granted was over public lands only. For a full and correct statement of the terms of said Acts of Congress, defendants beg to refer to said Act and said Joint Resolutions themselves.

5. Answering paragraph 11 of the complaint, defendants admit the averments thereof except that they allege that Northern Pacific now operates and controls a total of 6,888.6 miles of railroad within the States of Wisconsin. Minnesota, North Dakota, Montana, Idaho, Washington and Oregon, and that the railroad of Northern Pacific, extending from Minneapolis and St. Paul to the Pacific Northwest, was constructed and placed in operation long before the construction of the lines of Great Northern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company between said points.

6. Answering paragraph 12 of the complaint, defendants allege that under the land grants made by the Act of Congress of July 2, 1864, and the Joint Resolution of May 31, 1870, referred to in said paragraph, Northern Pacific acquired 39,494,391.79 acres of land, of which approximately 39,400,000 acres were in the States in which [fol. 18] its lines now operate; that prior to January 1, 1949, defendant Northern Pacific and its predecessor sold 37,216,767.90 acres of such land; that approximately 21,000,000 acres thereof were sold without reservation or exception of minerals of any nature whatsoever, and that defendants have heretofore released by quitclaim deed all exceptions or reservations of minerals in approximately 9,500,000 acres thereof which were originally sold subject to exception or reservation of minerals; that defendants

still own, exclusive of land classified by the Interstate Commerce Commission as "land for transportation purposes", approximately 2,700,000 acres of land including, in addition to lands acquired under said Act and Joint Resolution, lands acquired by purchase and lands acquired under other land grant Acts; that the lands heretofore sold by defendants and their predecessors and the lands still owned by them are of various types, many being farm lands, some containing timber, some containing iron ore. and some containing coal, oil, clay or other natural resources; that except for certain tracts of land which are being held as a source of supplies for maintenance and operation of the railroad of defendant Northern Pacific, and certain lands known or supposed to contain oil, gas or other valuable minerals, defendants are and at all times have been engaged in finding purchasers for said lands, and have not generally engaged in the leasing of said lands for grazing purposes except pending the sale thereof, and with minor exceptions have not engaged in the sale of rights to use any of said lands for the location of indus- [fol. 19] trial sites; that defendants are engaged in the sale of the standing timber and the rights to remove timber, oil, gas, metals, clay, coal and other natural resources from lands or interests therein still owned by them. Except as in this paragraph admitted, or otherwise alleged, defendants deny each of the averments contained in paragraph 12 of said complaint.

7. Answering paragraph 13 of the complaint, defendants deny the averments thereof except that they admit that a substantial part of the approximately 2,700,000 acres of land still owned by them is leased for various purposes to others.

8. Answering paragraph 14 of the complaint, defendants admit the averments thereof.

9. Answering paragraph 15 of the complaint, defendants admit the averments thereof except that they deny that any conduct on the part of them or either of them prevents or unreasonably restrains active competition by the carriers referred to in said paragraph for the transporta-

tion of any of the commodities or products therein mentioned, and they allege that said carriers are and at all times have been in active competition with the defendant, Northern Pacific, for the transportation of said commodities and products.

10. Answering paragraphs 16 and 17 of the complaint, defendants deny each and every averment in said paragraphs contained.

[fol. 20] 11. Answering the paragraph, including sub-paragraphs 1 to 8, inclusive, thereof, under the heading "Effects of Violations", pages 12 and 13 of the complaint, defendants deny each and every averment contained in said paragraph and sub-paragraphs.

Second Defense

1. Preferential routing agreements, under the terms of which a shipper covenants and agrees with a transportation company that he will use its line for the transportation of all his shipments destined to or originating at points on or reached via its line, provided it shall not charge a higher rate than that offered by any competing line, have been usual and customary throughout the history of railroads. Such agreements are normal, natural and reasonable. They promote the construction of transportation facilities, further the legitimate interests of the transportation company, and enable it to maintain and provide adequate transportation service. They do not restrain competition, but on the contrary insure continuing competition as to rates and service.

2. Prior to the construction of defendant Northern Pacific's line of railroad from Lake Superior to Puget Sound, the territory subsequently traversed thereby was an undeveloped and substantially uninhabited region of the United States, consisting of great stretches of homeless prairies, trackless forests and unexplored mountains. In order to bring about the construction and operation of a [fol. 21] line of railroad extending through that territory and thus to encourage the settlement and facilitate the development of that region, promote commerce and estab-

lish a convenient highway to and from the Pacific Coast for the transportation of mails, troops, munitions and public stores, with all the resultant advantages to the Government and the public, the Congress of the United States enacted the Act of July 2, 1864 (13 Stat. 365), and the Joint Resolution of May 31, 1870 (16 Stat. 378), embodying a proposal to Northern Pacific's predecessor that, if it would undertake and perform that vast work, it should receive in return the lands comprehended in the grant. Northern Pacific Railroad Company, defendant's predecessor, accepted the proposal and at enormous cost constructed the road and put the same in operation. For many years thereafter, defendant Northern Pacific and its predecessor transported the mails and property and troops of the United States thereover at reduced rates, pursuant to the provisions of Section 11 of said Act of July 2, 1864, and various Acts of Congress passed in pursuance thereof which provided deductions, account land grant, from the commercial rates applicable to such Government transportation. Through such land grant deductions plaintiff has obtained full payment for the lands so granted. Whatever advantage the ownership of said lands gave to Northern Pacific in competition with other transportation agencies subsequently entering the field was earned by construction of its railroad and by performance of the obligations imposed upon it by the Act of July 2, 1864, [fol. 22] and was reasonably within the contemplation of said granting Act. By reason of the facts hereinabove set forth, defendants and their predecessors were and are reasonably and equitably entitled to secure agreements for preferential routing of traffic via Northern Pacific at rates not exceeding those of competing lines as an incident to the sale or lease of any of said lands.

3. Defendants have at all times disposed of the land grant lands thus acquired as rapidly as market conditions and proper examination thereof would permit, and have heretofore sold and conveyed to purchasers more than 37,000,000 acres thereof. More than 90% of the lands thus sold and conveyed have been conveyed without obtaining any agreement from the purchasers with respect to the

routing of traffic. In substantially all cases in which an agreement with respect to the routing of traffic has been obtained from the purchaser, such agreement has been limited to traffic destined to points on or reached via lines of Northern Pacific, and has been made subject to a proviso that Northern Pacific, its successors or assigns, shall not charge a higher rate than that charged by other competing transportation lines between the same points for similar services. Preferential routing provisions, however, have generally been included in leases of such lands for grazing purposes or for the removal of coal, oil, gas, timber, iron ore, or other natural resources, but in substantially all cases such preferential routing agreements have been sub- [fol. 23] ject to provisos which fully preserved the rights of such lessees to use the services of other transportation agencies whenever their rates or services were more favorable than those of Northern Pacific. For example, defendants' grazing leases contain the following standard provision which in some instances has been modified or eliminated at the request of the lessee:

> "All shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines."

Defendants' usual form of oil and gas lease contains the following provisions, which may be modified or amended in individual cases at the request of the applicant:

> "8. The lessee covenants that all products obtained from the premises, as well as from the adjacent lands now or hereafter controlled by it, or manufactures from said products, so far as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the premises are a part, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.

"9. All oil controlled by the lessee, produced from the premises and other lands in the oil field of which the premises are a part shall be delivered to a pipe line reaching the rails of the Northern Pacific Railway Company, whenever there is a pipe line available for such delivery and a price can be obtained for oil so delivered which is at least equal to the price then obtainable for oil produced on said property and delivered to any other pipe line.

"10. Should the lessee decide to construct or cause [fol. 24] others to construct a refinery to refine oil from the field of which the premises are a part, such refinery shall be located at some point on the Northern Pacific rails, provided that at such time it shall be as feasible and economical to construct such refinery on Northern Pacific rails as on those of any other railroad company and all the products of such refinery shall be shipped over the line of the Northern Pacific Railway and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale."

Defendants' leases of coal lands generally contain the following or a similar provision:

"The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line."

Defendants' iron ore leases generally contain the following or a similar provision:

"A material consideration moving to the lessor and without which this contract would not be made, is the covenant by the lessee for itself, its successors and assigns, that rates, service and facilities being equal

to those of any competing line, it will ship all ore mined and shipped from the premises, also all treated products and concentrates mined from the premises, over such railroad line or lines as the lessor may designate from time to time; and that it will not sell or assign its interest in the premises, nor sublet without imposing a like covenant upon such purchaser, assignee or sub-lessee."

Defendants' timber contracts, under which the purchaser of the timber is given the right to cut and remove the same from lands of the defendants, generally contain the follow-
[fol. 25] ing or a substantially similar provision:

"The purchaser agrees, as one of the material considerations of this contract, that, rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports."

4. Defendants have never made a practice of agreeing with or representing to manufacturers who consent to ship their products over the lines of Northern Pacific that defendants will direct or cause grantees of rights in or to the use of lands owned by either of them to supply commodities to such manufacturers for processing or manufacturing. Except in a few instances, defendants have never required

grantees or lessees of their lands to offer to sell or otherwise dispose of, or to sell or otherwise dispose of, commodities raised or produced on such lands or any other lands to vendees designated by defendants or either of them. Defendants have at times sold timber to independent logging companies which were not engaged in the manufacture of any lumber products, and in such instances [fol. 26] have, as an incident of the sale, obtained from the logging company an agreement that it would offer to sell the logs and poles produced by it from such lands, either at prices, terms and conditions suitable to it, or at the prevailing market price, to a designated manufacturer served by Northern Pacific or to such other lumber manufacturing company or companies as would agree in writing that to the extent that such purchaser should be able to control the routing, and provided that Northern Pacific's rates were equal to those of any competing line, he would ship the products thereof via Northern Pacific when destined to points on the railroad of Northern Pacific or its connecting lines.

5. An adequate and continuing supply of logs is essential to the continued ability of manufacturers of lumber to carry on trade and commerce in lumber and lumber products, and the prosperity of many communities served exclusively by Northern Pacific is dependent upon the continued operation of the manufacturers of lumber located therein. It is natural, normal and reasonable for defendants, in the furtherance of their own legitimate interests and the interests of manufacturers and communities which are served by Northern Pacific, to make provision that such manufacturers shall have preference at equal prices in the purchase of timber cut from lands owned by defendants. Such provisions do not eliminate competition for the purchase of such products, and do not restrain but instead promote commerce and trade.

[fol. 27] 6. It is convenient and necessary to the successful operation of a line of railroad, and to the furnishing by it of adequate transportation service to the shipping public, that industries requiring access to railroad trackage for the conduct of their respective businesses be furnished

the use of industrial sites on or adjacent to the right of way of such railroad. To this end, all railroads endeavor to acquire lands, suitable for industrial sites, adjoining their respective rights of way in communities which they serve. There is and at all times has been active competition between defendant Northern Pacific and other railroad companies to induce industries to locate on industrial sites on or adjacent to their respective rights of way. Leases of industrial sites may be for a term of years or for an indefinite term as may be agreed between the parties. Defendant Northern Pacific requires a lease for a definite term of years only where it is obligated by the terms of the lease to make substantial improvements on its property for the use of the lessee. All indefinite term leases provide that either party may terminate the same at any time upon thirty days' written notice to the other party. Defendant Northern Pacific and other railroads usually include the following preferential routing provision in all industrial leases except grain elevator and grain warehouse leases:

> "Rates being as favorable, the lessee shall do all transportation business over the railroad of the Railway Company."

[fol. 28] 7. Grain elevators and warehouses are used for the purpose of receiving, storing, shipping, elevating and delivering grain, and are transportation facilities. In order to compete for the transportation of grain produced in the territory which it serves, a railroad company must either provide and operate its own grain elevators or grain loading facilities, or secure, as lessees of grain elevator sites on or adjacent to its right of way, companies engaged in the business of storing and elevating grain, or it must construct trackage to a grain elevator located on other property at the shipping point which it serves. Northern Pacific's standard form of grain elevator lease covering elevators located on its own right of way accordingly provides that "the Railway Company shall have the exclusive right of carrying all grain to be transported from said elevator". Defendants allege on information and

belief that all other railroads make like provision under the same circumstances.

8. The practices of defendants hereinabove described were in effect when the railroads of Great Northern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company were constructed or extended from St. Paul and Minneapolis to the Pacific Coast, and had been practiced for many years prior thereto and for many years prior to the advent of the trucking industry. Notwithstanding the long existence of said practices, said competing transportation lines and agencies entered the field served by defendant Northern Pacific and have grown and prospered, and have been and are in active compe- [fol. 29] tition with Northern Pacific. Defendants allege that they have neither monopolized nor attempted to monopolize the transportation of products or commodities produced in the territory which they serve, and that the preferential routing agreements which they have obtained have neither restrained nor tended to restrain interstate commerce or trade. Defendants further allege that the products and commodities shipped via Northern Pacific because of such preferential routing clauses constitute and have at all times constituted a relatively small proportion of the products and commodities of like character produced and transported to, from and within the territory served by defendant Northern Pacific.

WHEREFORE, having fully answered plaintiff's complaint, the defendants pray that said complaint be dismissed and that defendants have and recover their costs and disbursements to be taxed as provided by law.

M. L. Countryman, Jr., Dean H. Eastman, Harold G. Boggs, Roscoe Krier, Attorneys for Defendants, Office Address: 909 Smith Tower, Seattle 4, Washington.

Service accepted Nov. 22, 1949

C. L. Whittinghill, of Attorneys for Plaintiff.

[fol. 30] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

REQUEST FOR ADMISSIONS UNDER RULE 36—
Filed August 10, 1951

Plaintiff, the United States of America, pursuant to Rule 36 of the Federal Rules of Civil Procedure, for the reasons set forth in the affidavit attached hereto and for the purpose of resolving certain issues of fact without the necessity of lengthy trial procedure, requests defendants Northern Pacific Railway Company and Northwestern Improvement Company within 60 days after service of this request to admit that each of the statements hereinafter set forth is true for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

I

Timber Land Sales

A. The defendants, and their predecessors, during the period 1887 through 1949, made at least 42 sales of timber land including those listed in Appendix I-A hereof, with a total area of more than 49,388 acres and estimated to contain in excess of 1,145,440,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship via the Northern Pacific Railway Company all logs, poles and timber cut under this contract.*

[fol. 31] B. The defendants, and their predecessors, during the period 1887 through 1949, made at least 72 sales of timber land including those listed in Appendix I-B here-

of, with a total area of more than 2,132,204 acres and estimated to contain in excess of 21,451,123,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship via the Northern Pacific Railway Company, all lumber and other products manufactured from the timber cut under this contract.*

C. The defendants, and their predecessors, during the period 1887 through 1949, made at least 7 sales of timber land including those listed in Appendix I-C hereof, with a total area of more than 120,147 acres and estimated to contain in excess of 1,345,425,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will deliver to and ship over the line of the Northern Pacific Railway Co. and its connections, all products manufactured from the timber upon all other lands in the vicinity which the purchaser may at any time control.*

D. The defendants, and their predecessors, during the period 1887 through 1949, made at least 4 sales of timber land including those listed in Appendix I-D hereof, with a total area of more than 41,466 acres and estimated to contain in excess of 688,450,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, *it will offer to sell to* [*desig-*

nated vendees] all logs from the timber cut under this contract, suitable for its use, at the prevailing market price.

[fol. 32] E. The defendants, and their predecessors, during the period 1887 through 1949, made at least 44 sales of timber land including those listed in Appendix I-E hereof, with a total area of more than 145,512 acres and estimated to contain in excess of 1,804,177,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship by the Northern Pacific Railway Company all [timber and/or products manufactured therefrom] or an equivalent quantity of timber and other products manufactured from timber cut from lands not covered by this or other contracts now in effect with the Northern Pacific Railway Company or the Northwestern Improvement Company.*

F. The defendants, and their predecessors, during the period 1887 through 1949, made at least 28 sales of timber land including those listed in Appendix I-F hereof, with a total area of more than 1,026,046 acres and estimated to contain in excess of 6,059,462,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal it will [ship timber and/or products manufactured therefrom via Northern Pacific Railway Company]. *Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.*

G. The defendants, and their predecessors, during the period 1887 through 1949, made at least 8 sales of timber land including those listed in Appendix I-G hereof, with a total area of more than 78,297 acres and estimated to contain in excess of 758,016,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> [fol. 33] The purchaser agrees as one of the material considerations of this contract that, rates being equal it will ship via Northern Pacific Railway [timber and/or products manufactured therefrom]; *that it will offer to sell the logs and poles produced by it from said lands to such lumber manufacturing company or companies as will agree in writing to ship via the Northern Pacific Railway, rates being equal, and to the extent that such purchaser shall be able to control the routing, the lumber and other products manufactured from said logs and poles, destined to points on the railroad of the Railway Company or its connecting lines.*

H. The defendants, and their predecessors, during the period 1887 through 1949, made at least 19 sales of timber land including those listed in Appendix I-H hereof, with a total area of more than 142,883 acres and estimated to contain in excess of 1,739,379,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a light variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal it will [ship timber and/or products manufactured therefrom via Northern Pacific Railway]. *The purchaser shall make monthly reports to the railway company of shipments under this provision and shall permit the railway company to examine its records at any convenient time or place for the purpose of verifying such reports.*

II

Timber Sales

A. The defendants, and their predecessors, during the period 1887 through 1949, made at least 179 sales of timber, including those listed in Appendix II-A hereof, with a total area of more than 326,159 acres and estimated to contain in excess of 4,886,723,871 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, *he will ship via the Northern Pacific Railway all logs, poles,* lumber and other products manufactured from the timber *cut under this contract,* or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such [fol. 34] shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 33 such covenants or agreements relating to a total area of more than 62,219 acres of timber land estimated to contain in excess of 854,455,995 feet, board measure, were in effect and subsisting.

B. The defendants, and their predecessors, during the period 1887 through 1949, made at least 195 sales of timber, including those listed in Appendix II-B hereof, with a total area of more than 384,957 acres and estimated to contain

in excess of 10,541,459,371 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, *he will ship via the Northern Pacific Railway all* logs, poles, *lumber and other products manufactured from the timber cut under this contract,* or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 39 such covenants or agreements relating to a total area of more than 108,923 acres of timber land estimated to contain in excess of 1,722,362,995 feet, board measure, were in effect and subsisting.

C. The defendants, and their predecessors, during the period 1911 through 1949, made at least 13 sales of timber, [fol. 35] including those listed in Appendix II-C hereof, with a total area of more than 51,028 acres and estimated to contain in excess of 669,669,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The party of the second part agrees that it, its successors and assigns, will offer to the Northern Pacific

> Railway Company for transportation over its lines, and will allow said Railway Company to transport, *all timber,* lumber and lumber products manufactured *from the timber cut* from the lands herein described and *from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway* Company shall transport such timber, lumber and lumber products at as low rates as any competing line.

During the year 1949 at least 1 such covenant or agreement relating to a total area of more than 13,620 acres of timber land estimated to contain in excess of 204,300,000 feet, board measure, was in effect and subsisting.

D. The defendants, and their predecessors, during the period 1911 through 1949, made at least 13 sales of timber, including those listed in Appendix II-D hereof, with a total area of more than 53,448 acres and estimated to contain in excess of 825,971,000 feet, board measure, containing the underlined covenant or ageement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The party of the second part agrees that it, its successors and assigns, will offer to the Northern Pacific Railway Company for transportation over its lines, and will allow said Railway Company to transport, *all timber, lumber and lumber products manufactured from the timber cut* from the lands herein described and *from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway* Company shall transport such timber, lumber and lumber products at as low rates as any competing line.

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 16,342 acres of timber land estimated to contain in excess of 269,381,000 feet, board measure, were in effect and subsisting.

E. The defendants, and their predecessors, during the period 1887 through 1949, made at least 8 sales of timber,

[fol. 36] including those listed in Appendix II-E hereof, with a total area of more than 7,021 acres and estimated to contain in excess of 122,706,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> (4) *The purchaser further agrees, as one of the material considerations of this contract, that it will, prior to offering the same for sale to any other party, offer for sale, or cause to be offered for sale, from time to time as produced, at market prices prevailing at the time of offer,* to the C. B. Lumber & Shingle Company, of Everett, Washington, and to the Seattle Cedar Lumber Company, each on equal proportion, *all cedar logs cut from the timber on said lands and from said other timber.* Either said C. B. Lumber & Shingle Company or said Seattle Cedar Lumber Company *shall have the right, within a reasonable time after receipt of offer, to accept all or any portion of the cedar logs offered to it, as above provided, and, in the event either shall not accept all of the cedar logs so offered to it, the portion not so accepted shall forthwith be offered to the other and such other shall have the right to accept all or any part of such portion, upon the terms above provided, before any part of such portion is offered for sale to any other party.*

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 3,042 acres of timber land estimated to contain in excess of 69,881,000 feet, board measure, were in effect and subsisting.

F. The defendants, and their predecessors, during the period 1917 through 1949, made at least 89 sales of timber, including those listed in Appendix II-F hereof, with a total area of more than 119,097 acres and estimated to contain in excess of 1,816,895,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:.

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, *or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract.* Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern [fol. 37] Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 34 such covenants or agreements relating to a total area of more than 84,613 acres of timber land estimated to contain in excess of 1,220,072,000 feet, board measure, were in effect and subsisting.

G. The defendants, and their predecessors, during the period 1915 through 1949, made at least 79 sales of timber, including those listed in Appendix II-G hereof, with a total area of more than 144,246 acres and estimated to contain in excess of 2,250,847,661 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from

timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. *Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.* The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 23 such covenants or agreements relating to a total area of more than 63,175 acres of timber land estimated to contain in excess of 1,181,101,000 feet, board measure, were in effect and subsisting.

H. The defendants, and their predecessors, during the period 1925 through 1949, made at least 7 sales of timber, including those listed in Appendix II-H hereof, with a total area of more than 2,280 acres and estimated to contain in excess of 52,507,000 feet, board measure, containing the [fol. 38] underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

The purchaser agrees, as one of the material considerations of this sale, that it will ship or cause to be shipped via the Northern Pacific Railway all products manufactured from all logs cut from the timber which is the subject of this contract, *and that in the sale of such logs it will obtain from its vendee a written undertaking in the form of agreement marked "Exhibit A" hereto attached and made a part hereof. It is specifically understood and agreed, however, that if the Railway Company shall notify the purchaser in writing that any such vendee of the purchaser is in default of compliance with the terms of such undertaking, the purchaser shall forthwith discontinue making any fur-*

ther sales to such vendee of logs or other forest products until such time as the Railway Company shall notify the purchaser in writing that sales to such vendee may be resumed.

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 560 acres of timber land estimated to contain in excess of 25,287,000 feet, board measure, were in effect and subsisting.

I. The defendants, and their predecessors, during the period 1915 through 1949, made at least 51 sales of timber, including those listed in Appendix II-I hereof, with a total area of more than 24,293 acres and estimated to contain in excess of 395,180,661 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. *The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.*

[fol. 39] During the year 1949 at least 4 such covenants or agreements relating to a total area of more than 3,200

acres estimated to contain in excess of 97,623,000 feet, board measure, were in effect and subsisting.

III

Mineral Land Leases

A. The defendants and their predecessors, during the period 1887 through 1949, made at least 62 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-A hereof, with a total area of more than 42,386 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> A material consideration moving to the lessor, without which this lease would not be made is the covenant by the lessee for himself, his heirs, successors and assigns, *that all minerals and ores shipped from the [leased] premises shall be shipped over such railroad line as the lessor may designate,* provided that the rates charged by such railroad, its available facilities and the service furnished by it shall be equal in all respects to those which could be furnished by any other competing railroad line, and provided that the cost per ton of haulage and shipment from the premises to the smelter is not greater than that of any other route.

During the year 1949 at least 15 such covenants or agreements relating to a total area of more than 6,250 acres of mineral land were in effect and subsisting.

B. The defendants and their predecessors, during the period 1887 through 1949, made at least 19 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-B hereof, with a total area of more than 5,450 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of [the mineral], *all products manufactured from the [mineral], taken from the premises herein leased,* or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said [mineral] or manufactured products, at as low rates as any competing rail line.

[fol. 40] During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 2,570 acres of mineral land were in effect and subsisting.

C. The defendants and their predecessors, during the period 1887 through 1949, made at least 33 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-C hereof, with a total area of more than 570 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport *all shipments of [the mineral]*, all products manufactured from the [mineral], taken from the premises herein leased, *or other lands which the lessee may now or hereafter own or control,* provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line.

During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 570 acres of mineral land were in effect and subsisting.

D. The defendants and their predecessors, during the period 1887 through 1949, made at least 13 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-D hereof, with a total area of more than 2,120 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines and will allow the lessor to transport all shipments of [the mineral], *all products manufactured from the [mineral]*, taken from the premises herein leased, *or other lands which the lessee may now or hereafter own or control*, provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line.

During the year 1949 at least 3 such covenants or agreements relating to a total area of more than 290 acres of mineral land were in effect and subsisting.

[fol. 41] E. The defendants and their predecessors, during the period 1887 through 1949, made at least 11 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-E hereof, with a total area of more than 19,526 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee covenants that all [minerals] produced from the premises, as well as from the adjacent lands now or hereafter controlled by him, so far as such [minerals] are destined for rail shipment, *as well as all incoming freight destined for use in the mining and treatment of said [minerals]*, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.

During the year 1949 at least 1 such covenant or agreement relating to a total area of more than 120 acres of mineral land was in effect and subsisting.

F. The defendants and their predecessors, during the period 1887 through 1949, made at least 6 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-F hereof, with a total area of more than 3,010 acres containing the underlined covenant or agreement set forth below, or a slight variation

thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of [mineral], all products manufactured from the [mineral], taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line. *Where the point of destination of the product is not on the line of the lessor, such shipments shall be routed to favor the lessor with the longest haul,* if the expense to the lessee is not increased over the cost of shipment over another rail line.

During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 2,690 acres of mineral land were in effect and subsisting.

[fol. 42]

IV

Grazing Land Leases

A. The defendants and their predecessors, during each year 1920 through 1948 leased to others more than a million acres of grazing land. The leases contained the following covenant or agreement, or a slight variation thereof:

> All shipments of live stock, wool, mutton, or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines.

During the year 1949 at least 1,000 such covenants or agreements, including those listed in Appendix IV hereof, covering more than one million acres of grazing land were in effect and subsisting.

V

Oil and Gas Land Leases

A. The defendants, during the period 1918 through 1949, granted approximately 50 oil and gas permits and leases, including those listed in Appendix V, hereof, covering approximately 150,000 acres of oil and gas lands. The permits and leases contained the following covenant or agreement, or a slight variation thereof:

> The lessee covenants that all products obtained from the premises, as well as from the adjacent lands now or hereafter controlled by it, or manufactured from said products, so far as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the premises are a part, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.
>
> All oil controlled by the lessee, produced from the premises and other lands in the oil field of which the premises are a part shall be delivered to a pipe line reaching the rails of the Northern Pacific Railway Company, whenever there is a pipe line available for such delivery and a price can be obtained for oil so delivered which is at least equal to the price then obtained for oil produced on said property and delivered to any other pipe line.
>
> Should the lessee decide to construct or cause others to construct a refinery to refine oil from the field of which the premises are a part, such refinery shall be located at some point on the Northern Pacific rails, [fol. 43] provided that at such time it shall be as feasible and economical to construct such refinery on Northern Pacific rails as on those of any other railroad company and all the products of such refinery shall be shipped over the line of the Northern Pacific Railway and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale.

During the year 1949, at least 20 such covenants or agreements covering approximately 135,000 acres of oil and gas land were in effect and subsisting.

VI

Coal Land Leases

A. The defendants during the period 1889 through 1949 granted approximately 150 leases, including those listed in Appendix VI hereof, covering more than 75,000 acres of coal land. The leases contained the following covenant or agreement, or a slight variation thereof:

> The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line.

During the year 1949 at least 15 such covenants or agreements covering approximately 10,000 acres of coal lands were in effect and subsisting.

VII

Iron Ore Land Leases

A. The defendants during the period 1914 through 1949 granted approximately 31 leases, including those listed in Appendix VII hereof, covering approximately 6,461 acres of iron ore land. The leases contained the following covenant or agreement, or a slight variation thereof:

> A material consideration moving to the lessor and without which this contract would not be made, is the covenant by the lessee for itself, its successors and assigns, that rates, service and facilities being equal to those of any competing line, it will ship all ore mined and shipped from the premises, also all treated products and concentrates mined from the premises, over such railroad line or lines as the lessor may designate

from time to time; and that it will not sell or assign its interest in the premises, nor sublet without imposing a like covenant upon such purchaser, assignee or sublessee.

During the year 1949 at least 16 such covenants or agreements covering approximately 5,261 acres of iron ore land were in effect and subsisting.

[fol. 44] Charles L. Whittinghill, Aute L. Carr, Robert H. Weinstein, Gerald F. McLaughlin, Attorneys for Plaintiff.

Copy received 8-10-'51.

Harold G. Boggs, Attorney for defendants.

[fol. 45] APPENDIX I TO REQUEST

Timber Land Sales

A

Numbe.	State	Purchaser	Date	Acres	Board Feet
9,652	Wash.	North Bend Timber Co.	3-12-23	3,133	46,995,000 **
9,713	"	Buckley Logging Co.	4-22-24	1,275	19,125,000 **
9,726	"	Carlson Lumber Co.	9- 8-24	1,640	13,000,000 *
9,766	"	Dalkena Lumber Co.	11-20-25	2,991	16,725,000 *
9,769	"	Howe McGibbon Timber Co.	12-21-25	1,200	18,000,000 **
9,778	"	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,897	"	Eller Lumber Co.	5-24-29	1,190	17,850,000 **
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	"	Panhandle Lumber Co.	8-20-35	1,864	27,960,000 **
10,143	"	North Pacific Timber Operations, Inc.	11- 1-35	990	14,850,000 **
10,178	"	Seattle Export Lumber Co.	8-14-38	652	9,780,000 **
10,224	"	Tacoma Eastern Timber Co.	8- 9-37	593	8,895,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Co.	10- 2-39	2,236	100,000,000 *
10,285	"	St. Paul & Tacoma Lbr. Co.	9-27-40	450	6,750,000 **
10,309	"	St. Paul & Tacoma Lbr. Co.	5-18-40	240	2,380,000 *
10,320	"	Walton Lumber Co.	9-11-40	640	30,480,000 *
10,331	"	St. Paul & Tacoma Lbr. Co.	11-12-40	640	9,600,000 **
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	"	St. Paul & Tacoma Lbr. Co.	3-17-41	640	9,600,000 **
10,340 & NW 1-482	"	St. Paul & Tacoma Lbr. Co.	4- 1-41	3,165	47,475,000 **
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	"	St. Paul & Tacoma Lbr. Co.	2- 1-42	1,194	17,910,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,447	"	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,466	"	" " " "	8-30-43	1,440	52,581,000 *
10,468	"	" " " "	8-30-43	1,440	52,591,000 *
10,579	"	" " " "		1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1-20-47	383	3,288,000 *
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
N-213	"	St. Paul & Tacoma Lumber Co.	4-26-28	698	36,658,000 *
N-262	"	" " " "	9-26-29	1,280	81,481,000 *
N-343	"	" " " "	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *
N-416	"	" " " "	11- 5-37	4,333	154,115,000 *
N-475	"	" " " "	11- 7-40	640	37,061,000 *
N-480	"	" " " "	2-20-41	360	15,493,000 *
N-481	"	" " " "	3-18-41	708	30,601,000 *
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-589	"	" " " "	2- 7-46	640	49,497,000 *
				49,388	1,145,440,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 46] B

Number	State	Purchaser	Date	Acres	Board Feet
2,472	Mont.	Big Blackfoot Milling Co.	7- 1-97	41,152	167,241,000 ***
2,732	"	" " " "	6-14-98	10,124	41,143,000 ***
3,881	"	" " " "	8-31-01	150,432	611,355,000 ***
4,023	"	" " " "	3-31-02	184,375	571,164,000 *
4,535	"	" " " "	6-30-03	620,747	2,700,000,000 *
4,734	"	" " " "	6-30-04	1,600	9,440,000 *
4,932	"	" " " "	9- 7-07	11,927	53,017,500 *
5,861	"	" " " "	10-30-09	5,689	17,797,000 *
9,645	Wash.	J. Neils Lumber Co.	12-15-22	4,148	62,220,000 **
9,652	"	North Bend Timber Co.	3-12-23	3,133	46,995,000 **
9,713	"	Buckley Logging Co.	4-22-24	1,275	19,125,000 **
9,726	"	Carlson Lumber Co.	9- 8-24	1,640	13,000,000 *
9,758	"	White River Lumber Co.	8-28-25	8,676	130,140,000 **
9,766	"	Dalkena Lumber Co.	11-20-25	2,991	16,725,000 *
9,769	"	Howe, McGibbon Timber Co.	12-21-25	1,200	18,000,000 **
9,778	"	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,800	"	J. Neils Lumber Co.	9- 8-26	120	1,800,000 **
9,897	"	Eller Lumber Co.	5-24-29	1,190	17,850,000 **
9,936	"	Pacific National Lumber Co.	2-25-30	625	14,597,000 *
10,067	"	McGoldbrick Lumber Co.	7- 1-33	8,538	48,850,000 *
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	"	Panhandle Lumber Co.	8-20-35	1,864	27,960,000 **
10,143	"	North Pacific Timber Operations, Inc.	11- 1-35	990	14,850,000 **
10,152	"	Ralph Brindley, Trustee	2- 3-36	64	960,000 **
10,154	"	Albert Miller	2-29-36	298	4,470,000 **
10,168	"	T. A. Peterman dba Peterman Mfg. Co.	7- 1-36	2,216	33,240,000 **
10,178	"	Seattle Export Lumber Co.	8-14-38	652	9,780,000 **
10,224	"	Tacoma Eastern Timber Co.	8- 9-37	593	8,895,000 **
10,260	"	T. A. Peterman dba Peterman Mfg. Co.	2-27-39	1,198	31,140,000 *
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Co.	10- 2-39	2,236	100,000,000 *
10,285	"	St. Paul & Tacoma Lumber Co.	9-27-40	450	6,750,000 **
10,302	"	Lindberg & Hobi Co.	4-16-40	36,385	545,775,000 **
10,309	"	St. Paul & Tacoma Lumber Co.	5-18-40	240	2,280,000 **
10,319	"	T. A. Peterman dba Peterman Mfg. Co.	8-28-40	480	7,200,000 **
10,320	"	Walton Lumber Co.	9-11-40	640	30,480,000 *
10,331	"	St. Paul & Tacoma Lumber Co.	11-12-40	640	9,600,000 **
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	"	St. Paul & Tacoma Lumber Co.	3-17-41	640	9,600,000 **
10,340	"	St. Paul & Tacoma Lumber Co.	4- 1-41	3,165	47,475,000 **
10,346	"	T. A. Peterman	5-29-41	4,904	73,560,000 **
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	"	St. Paul & Tacoma Lumber Co.	2- 1-42	1,194	17,910,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,447	"	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	"	T. A. Peterman dba Peterman Mfg. Co.		28,333	21,600,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *

[fol. 47]

B

Number	State	Purchaser	Date	Acres	Board Feet
10,486	Wash.	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.		1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1- 2-47	383	5,745,000 **
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
	****	Frederick Weyerhaeuser	1- 3-00	900,000	14,981,000,000 *
N-150	Wash.	St. Paul & Tacoma Lumber Co.	3-24-24 9-22-31	600	9,000,000 **
N-213	"	" " " "	1- 7-28	698	36,658,000 *
N-262	"	" " " "	12-13-29	1,280	81,481,000 *
N-281	"	Klement & Kennedy	6- 5-30	643	9,045,000 **
N-343	"	St. Paul & Tacoma Lumber Co.	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *
N-416	"	" " " "	11- 5-37	4,338	154,115,000 *
N-475	"	" " " "	11- 7-40	640	37,061,000 *
N-476	"	West Coast Plywood Co.	11- 1-40 9-15-41	641	9,615,000 **
N-480	"	St. Paul & Tacoma Lumber Co.	2-20-41	360	15,493,000 *
N-481	"	" " " "	3-18-41	708	30,601,000 *
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-488	"	Mutual Lumber Co.	5- 9-41	201	3,015,000 **
N-580	"	St. Paul & Tacoma Lumber Co.	3-28-45	480	21,228,000 *
N-589	"	" " " "	1- 6-48	640	49,497,000 *
2040 or 2047	Idaho	Winton Lumber Co.	1-20-38	21,440	50,000,000 *
2089	"	Pack River Timber Co.	5- 8-45	34,828	75,000,000 **
				2,132,204	21,451,123,500

* Defendants' Estimate
** Plaintiff's Estimate
*** Estimate of Board Feet based on average of Montana Contracts 4023, 4535, 4734, 4932, 5861 which comes to 4064 BF per acre.
**** Traffic provision in effect for 15 years only.

[fol. 48]

C

Number	State	Purchaser	Date	Acres	Board Feet	Board Feet Adjacent Lands
9,758	Wash.	White River Lumber Co.	8-28-25	8,676	200,000,000 *	200,000,000 *
10,067	"	McGoldrick Lumber Co.	7- 1-33	8,538	48,850,000 *	25,000,000 *
10,302	"	Lindberg & Hobi Co.	4-16-40	36,385	545,775,000 **	
10,463	"	" " " "	8-30-43	840	12,600,000 **	
10,464	"	T. A. Peterman dba Peterman Mfg. Co.		28,333	424,995,000 **	
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **	
2,089	Idaho	Pack River Timber Company	5- 8-45	34,828	75,000,000 **	
				120,147	1,345,425,000	225,000,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 49]

D

Number	State	Purchaser	Date	Acres	Board Feet
10,154	Wash.	Albert Miller	2-29-36	298	4,470,000 **
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
				41,466	688,450,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 50]

E

Number	State	Purchaser	Date	Acres	Board Feet
9,645	Wash.	J. Neils Lumber Company	12-15-22	4,148	62,222,000 **
9,713	"	Buckley Logging Company	4-22-24	1,275	19,125,000 **
9,778	"	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,800	"	J. Neils Lumber Company	9- 8-26	120	1,800,000 **
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	"	Panhandle Lumber Company	8-20-35	1,864	27,960,000 **
10,143	"	North Pacific Timber Operation, Inc.	11- 1-35	990	14,850,000 **
10,249	"	Diamond Match Company	1938	9,168	53,380,000 *
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,285	"	St. Paul & Tacoma Lumber Co.	9-27-40	450	6,750,000 **
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,309	"	St. Paul & Tacoma Lumber Co.	5-18-40	240	2,280,000 *
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,331	"	St. Paul & Tacoma Lumber Co.	11-12-40	640	9,600,000 **
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	"	St. Paul & Tacoma Lumber Co.	3-17-41	640	9,600,000 **
10,340	"	St. Paul & Tacoma Lumber Co.	4- 1-41	3,165	47,475,000 **
10,396	"	Seattle Export Lumber Company	1941	1,738	48,888,000 *
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	"	St. Paul & Tacoma Lumber Co.	2- 1-42	1,194	17,910,000 **
10,423	"	Diamond Match Company	5-18-42	640	9,600,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,447	"	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 **
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1- 2-47	383	5,745,000 **
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,066	"	Diamond Match Company	9-26-40	2,240	33,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-213	NWI	St. Paul & Tacoma Lumber Co.	1- 7-28	698	102,812 *
N-343	"	" " " "	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *

E

Number	State	Purchaser	Date	Acres	Board Feet
N-475	NWI	St. Paul & Tacoma Lumber Co.	11- 7-40	640	9,600,000 **
N-476	"	West Coast Plywood Company	9-15-41 11- 1-40	641	9,615,000 **
N-481	"	St. Paul & Tacoma Lumber Co.	7- 8-41	708	10,620,000 **
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-488	"	Mutual Lumber Company	5- 9-41	201	3,015,000 **
N-589	"	St. Paul & Tacoma Lumber Co.	1- 6-48	640	9,600,000 **
				145,512	1,804,177,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 51]

F

Number	State	Purchaser	Date	Acres	Board Feet
10,067	Wash.	McGoldrick Lumber Company	7- 1-33	8,538	48,850,000 *
10,116	"	Theodore F. Wall and Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,143	"	North Pacific Timber Operations	11- 1-35	990	14,850,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,400	"	Bloedel Donoven Lumber Mills	10-30-41	305	4,575,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	"	T. A. Peterman, dba Peterman Mfg. Company		28,333	424,995,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,682	"	St. Paul & Tacoma Lumber Co.	1- 2-47	383	5,745,000 **
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-476	Wash.	West Coast Plywood Co.	11- 1-40 9-15-41	645	9,615,000 **
N-488	"	Mutual Lumber Company	5- 9-41	201	3,015,000 **
2,472	Mont.	Big Blackfoot Milling Co.	7- 1-97	41,152	167,241,000 ***
2,732	"	" " " "	6-14-98	10,124	41,143,000 ***
3,881	"	" " " "	8-31-01	150,432	611,355,000 ***
4,023	"	" " " "	3-31-02	184,375	571,164,000 *
4,535	"	" " " "	6-30-03	620,747	2,700,000,000 *
4,734	"	" " " "	6-30-04	1,600	9,440,000 *
4,932	"	" " " "	9- 7-07	11,927	53,017,000 *
5,861	"	" " " "	10-30-09	5,689	17,797,000 *
				1,169,312	6,059,462,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Estimate of Board Feet based on average of Montana Contracts 4023, 4535, 4734. 4932, 5861 which comes to 4064 B.F. per acre.

[fol. 52]

G

Number	State	Purchaser	Date	Acres	Board Feet
10,224	Wash.	Tacoma Eastern Timber Company	8- 9-37	593	8,895,000 **
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,463	"	Lindberg & Hobi Company	8-30-43	840	12,600,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,682	"	St. Paul & Tacoma Lumber Co.	1- 2-47	383	5,745,000 **
2,089	Idaho	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
				78,297	758,016,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 53]

H

Number	State	Purchaser	Date	Acres	Board Feet
10,067	Wash.	McGoldrick Lumber Company	7- 1-33	8,538	48,850,000 *
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,143	"	North Pacific Timber Operations Inc.	11- 1-35	990	14,850,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	"	T. A. Peterman dba Peterman Mfg. Co.		28,333	424,995,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-476	Wash.	West Coast Plywood Company	9-15-41 11- 1-40	641	9,600,000 **
N-488	"	Mutual Lumber Company	5- 9-41	201	3,215,000 **
				142,883	1,739,379,000

* Defendants' Estimate
** Plaintiff's Estimate

[fol. 54] APPENDIX II TO REQUEST

Sales of Timber

A

Number	State	Purchaser	Date	Acres	Board Feet
3	Wash.	E. A. Stroup, et al.	2-19-95	160	9,800,000 *
13	"	St. Paul and Tacoma	1888	53,385	800,775,000 **
17	"	White River Shingle Co.	7- 1-87	320	1,800,000 *
55	Idaho	A. A. Crane and Goode	11-18-96	6,690	100,350,000 **
64	"	" " " "	12- 3-96	800	12,000,000 **
261	"	Sandpoint Lumber Co.	12- 1-98	25,000	375,000,000 **
458	"	Humbird Lumber Co.	10-10-06	10,560	37,140,000 *
530	Wash.	Manley-Moore Lumber Co.	6- 1-09	200	3,000,000 **
553	"	" " " "	1- 13-10	120	1,800,000 **
585	"	August Von Banklin	6-12-11	640	9,600,000 **
609	"	Manley-Moore Lumber Co.	12- 4-11	1,920	28,800,000 **
632	"	Pacific States Lumber Co.	9- 4-12	560	8,400,000 **
638	"	Manley-Moore Lumber Co.	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lumber Co.	12-21-12	320	4,800,000 **
679	"	Pacific States Lumber Co.	9-15-13	640	9,600,000 **
690	"	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	"	Manley-Moore Logging Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Brothers	1-29-13	200	3,000,000 **
753	"	Isaac Garrison	3-16-15	640	9,600,000 **
809	"	Pacific States Lumber Co.	7-31-16	840	12,600,000 **
*** 816	"	Somers Bros. Mfg. Co.	9-30-16	4,650	66,316,995 *
822	Idaho	Dalkena Lumber Co.	10-18-16	500	7,500,000 **
823	"	" " "	10-18-16	280	4,200,000 **
855	Wash.	Cascade Lumber Co.	7-10-17	320	4,800,000 **
904	"	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	"	Mutual Lumber Co.	10-30-18	1,300	4,500,000 *
1,026	"	W. G. McAvoy	4-28-21	80	1,346,500 *
1,050	"	Lake Sawyer Lumber Co.	3-27-22	120	1,800,000 **
1,078	"	E. P. Neukirchen	6-16-22	80	1,200,000 **
1,107	"	Allen and Nelson Mill Co.	3-29-23	300	4,500,000 **
1,110	"	Seaboard Timber Co.	4-18-23	600	9,000,000 **
1,119	"	R. Rasmussen	5-25-23	80	1,200,000 **
1,124	"	Lake Sawyer Lumber Co.	6-20-23	560	8,400,000 **
1,144	"	" " " "	11- 5-23	600	9,000,000 **
1,147	"	Manley-Moore Lumber Co.	12-15-23	880	13,200,000 **
1,154	"	North Palix Shingle & Lbr. Co.	2-25-24	160	2,400,000 **
1,157	"	P. Rasmussen	3- 7-24	120	1,800,000 **
1,158	"	J. S. Pederson	3-14-24	240	3,600,000 **
1,179	"	Manley-Moore Lumber Co.	7- 1-24	160	2,400,000 **
1,195	"	Buckley Lumber & Shingle Co.	12- 9-24	640	9,600,000 **
1,196	"	Trap Creek Logging Co.	1- 1-25	320	4,800,000 **
1,200	"	McMillan Lumber Co.	2-25-25	620	11,000,000 *
1,211	"	Lake Sawyer Lumber Co.	3-14-25	40	600,000 **
1,224	"	Johnson Brothers, Co.	4-29-25	80	1,200,000 **
1,226	"	Silver Lake Railway and Lbr. Co.	5- 7-25	80	1,200,000 **
1,250	"	M. C. Miller Lumber Co.	9-12-25	640	9,600,000 **
1,252	"	Cabin Creek Lbr. Co.	9-26-25	1,242	40,485,000 *
1,267	"	High Point Mill Co.	1-23-26	200	3,000,000 **
1,269	"	Manley-Moore Lbr. Co.	1-25-26	300	4,500,000 **
1,279	"	Dalkena Lumber Co.	3-31-26	120	1,800,000 **
1,281	"	Manley-Moore Lbr. Co.	4- 1-26	5,014	229,254,500 *
1,321	"	Pacific States Lbr. Co.	3-10-27	(4,687 (1,920	99,105,000 **

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Number	State	Purchaser	Date	Acres	Board Feet
1,325	Wash.	A. V. Lumber Co.	4-27-27	320	4,800,000 **
1,343	"	William Pierce	6-22-27	160	2,400,000 **
1,344	"	I. G. Naylor	8- 1-27	160	2,400,000 **
[fol. 55]					
1,353	Wash.	Lake Sawyer Lbr. Co.	10- 3-27	651	9,765,000 **
1,371	"	Covington Creek Lbr. Co.	1-23-28	560	8,400,000 **
1,374	"	J. Pinkham Lbr. Co.	2- -28	640	9,600,000 **
1,377	"	Preston Mill Co.	3- 8-28	640	9,600,000 **
1,387	"	High Point Mill Co.	5-31-28	360	5,400,000 **
1,398	"	George Jones	8- 3-28	200	3,000,000 **
1,410	"	Manley-Moore Lbr. Co.	7-31-28	2,680	157,299,465 *
1,444	"	Lake Sawyer Lbr. Co.	4-16-29	80	1,200,000 **
1,445	"	John M. Stoger	4-19-29	200	2,010,250 *
1,452	"	North Bend Timber Co.	5-23-29	40	600,000 **
1,453	"	Wood and Iverson	6- 8-29	920	17,693,000 *
1,457	"	M. C. Miller Lbr. Co.	6- 8-29	560	8,400,000 **
1,461	"	Gauthier Brothers	6-30-29	472	4,713,500 *
1,464	"	North Bend Timber Co.	8-17-29	281	4,215,000 **
1,469	"	Long Lake Lumber Co.	9-25-28	320	4,800,000 **
1,472	"	North Bend Timber Co.	11-25-29	240	3,600,000 **
1,476	"	Jones Lumber Co.	12-24-29	300	4,500,000 **
1,486	"	W. G. Jones	3-25-30	40	712,000 *
1,530	"	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
*** 1,542	"	St. Paul and Tacoma	2- 1-32	390	5,850,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	"	Carbon River Shingle Co.	11-21-33	120	1,800,000 **
1,584	"	North Bend Timber Co.	6- 2-33	340	5,100,000 **
1,586	"	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,659	"	V. Gattavara	6-19-33	1,510	22,650,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,676	Wash.	Kelso Veneer Co.	12-20-33	1,120	16,800,000 **
*** 1,710	"	T. A. Peterman	6- 6-34	645	1,300,000 *
1,715	"	Fairfax Lumber Co.	6- 8-34	3,690	55,350,000 **
1,728	"	Cascade Lumber Co.	10-31-34	302	2,987,000 *
1,731	"	St. Paul and Tacoma Lbr. Co.	12-18-34	18,820	282,300,000 **
1,731-1	"	" " " " " "	8- 1-36	400	6,000,000 **
1,731-2	"	" " " " " "	2-10-37	60	900,000 **
*** 1,731-3	"	" " " " " "	3- 8-37	588	34,609,000 *
*** 1,731-4	"	" " " " " "	10-23-46	320	4,800,000 **
1,749	"	Buckley Logging Co.	8-20-35	420	6,300,000 **
1,754	"	North Bend Timber Co.	10- 1-35	640	9,600,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	"	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,776	Wash.	West Fork Timber Co.	7-31-36	190	2,850,000 **
1,788	"	North Bend	10- 8-36	1,440	21,600,000 **
1,793	"	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,808	Mont.	Western Lumber Co.	8-22-28	16,846	158,482,000 *
1,813	Wash.	Wheeler-Osgood Corp.	5- 4-37	160	1,200,000 *
1,814	"	McGoldrick Lbr. Co.	5-20-37	640	9,600,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	"	M. C. Miller Lumber Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Mfg. Co.	12- 9-39	110	2,912,000 *

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Number	State	Purchaser	Date	Acres	Board Feet
1,840	Wash.	L. Marenakos	12- 1-37	640	9,600,000 **
1,884	"	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,887	"	Joe Walsh and Cascade Lbr. Co.	5-15-39	320	4,800,000 **
1,890	"	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12- 4-39	40	600,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	22,352,000 *
[fol. 56]					
1,924	Wash.	North Bend Timber Co.	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmas Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Brothers	10- 3-40	480	7,200,000 **
1,946	"	St. Paul and Tacoma	10-28-40	280	4,200,000 **
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller Gregory, Inc.	3-17-41	142	2,130,000 **
1,965	"	M. C. Miller Lumber Co.	3-25-41	160	2,400,000 **
1,969	"	Joe Walsh, Cascade Lbr. Co.	3-24-41	320	4,800,000 **
1,970	"	" " " " "	3-24-41	560	8,400,000 **
*** 1,975	"	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **
2,000	"	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,003	"	Joe Walsh, Cascade Tbr. Co.	11-28-41	100	1,500,000 **
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,035	"	Timber Development Co.	4-13-42	640	11,679,000 *
*** 2,037	Idaho	Potlatch Forest, Inc.	12- 1-48	26,075	312,531,000 *
2,059	Wash.	Lincoln Lumber Co.	6-12-42	280	475,000 *
*** 2,067	"	E. K. Bishop Lbr. Co.	8-15-42	120	3,314,000 *
*** 2,072	"	Long Lake Lbr. Co.	8-18-42	2,378	6,382,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
*** 2,080	"	Lyman Lumber Co. (Soundview Pulp)	1942	2,080	60,759,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Logman	7-27-43	200	423,000 *
2,122	"	Lindberg and Hobi	8-30-43	300	4,500,000 **
2,146	"	" " "	12-15-43	2,548	38,220,000 **
*** 2,162	"	Bloedel Donovan Lbr. Co.	4-17-44	320	4,800,000 **
2,177	"	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
*** 2,181	"	Ellensburg Lumber Co.	10- 9-44	320	1,378,000 *
*** 2,194	"	Harter Lumber & Fuel Co.	3-19-45	1,582	23,730,000 **
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,240	"	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	"	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boone, Incorporated	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,321	"	St. Paul & Tacoma Lbr. Co.	3-27-47	80	1,200,000 **
*** 2,326	"	Keene and Keene	4- 4-47	1,200	18,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,405,000 **
*** 2,328	Wash.	M. C. Miller Lumber Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma Lbr. Co.	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood Co.	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boone, Incorporated	10-20-47	33	495,000 **

A

Number	State	Purchaser	Date	Acres	Board Feet
2,388	Wash.	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,392	"	B. John Furniture Corp.	3- 6-47	115	3,916,000 *
*** 2,419	"	Olson Brothers Lumber Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Aurys	8- 2-48	20	300,000 **
*** 2,472	"	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	"	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
		East End			
832	Mont.	J. Schiffman	10- 1-45	1,040	15,600,000 **
*** 3,230	"	L. D. McFarland	12-10-45	640	9,600,000 **
*** 3,361	"	Wine Glass Ranch	7-21-48	600	1,000,000 *
NWI Misc. 1821		(T&M 1333) Donald Plummer	5-26-27	640	9,600,000 **
33 active contracts		62,219 Acres	854,455,995 Bd.Ft.		
146 inactive contracts		263,940 Acres	Total (179 contracts)		
				326,159	4,886,723,871

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 57]

B

Number	State	Purchaser	Date	Acres	Board Feet
13	Wash.	St. Paul and Tacoma Lumber Co.	1888	53,385	800,775,000 **
17	"	White River Shingle Co.	7- 1-87	320	4,800,000 **
55	Idaho	A. A. Crane and Goode Co.	11-18-96	6,690	100,350,000 **
64	"	" " " " " "	11-18-96	800	12,000,000 **
261	"	Sandpoint Lumber Co.	12- 1-98	25,000	375,000,000 **
306	Wash.	Kerry Mill Co.	10-10-01	640	9,600,000 **
458	Idaho	Humbird Lumber Co.	10-10-06	10,560	37,140,000 *
530	Wash.	Manley-Moore Lbr. Co.	6- 1-09	200	3,000,000 **
553	"	" " " "	1-13-10	120	1,800,000 **
585	"	August Von Bouhlin	6-12-11	640	9,600,000 **
609	"	Manley-Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
632	"	Pacific States Lumber Co.	9- 4-12	560	8,400,000 **
638	"	Manley-Moore Lbr. Co.	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
679	"	Pacific States Timber Co.	9-15-13	640	9,600,000 **
690	"	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	"	Manley-Moore Logging Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Brothers	1-29-13	200	3,000,000 **
809	"	Pacific States Lumber Co.	7-31-16	840	12,600,000 **
*** 816	"	Somers Brothers Mfg. Co.	9-30-16	4,650	66,316,995 **
822	Idaho	Dalkena Lumber Co.	10-18-16	500	7,500,000 **
823	"	" " "	10-18-16	280	4,200,000 **
855	Wash.	Cascade Lumber Co.	7-10-17	320	4,800,000 **
904	"	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	"	Mutual Lumber Co.	10-30-18	1,300	4,500,000 *
1,026	"	W. G. McAvoy	4-28-21	80	1,346,500 *
1,027	"	Cabin Creek Lumber Co.	5- 6-21	1,120	18,210,000 *

B

Number	State	Purchaser	Date	Acres	Board Feet
1,050	Wash.	Lake Sawyer Lumber Co.	3-27-22	120	1,800,000 **
1,078	"	E. P. Neukirchen	6-16-22	80	1,200,000 **
*** 1,097	"	J. Neils Lumber Co.	8-21-42	4,082	18,000,000 *
1,107	"	Allen and Nelson Mill Co.	3-29-23	300	4,500,000 **
1,110	"	Seaboard Timber Co.	4-18-23	600	9,000,000 **
1,119	"	R. Rasmussen	5-25-23	80	1,200,000 **
1,124	"	Lake Sawyer Lumber Co.	6-20-23	560	8,400,000 **
1,144	"	" " " "	11- 5-23	600	9,000,000 **
1,147	"	Manley-Moore Lumber Co.	12-15-23	880	13,200,000 **
1,154	"	North Palix Shingle and Lbr. Co.	2-25-24	160	2,400,000 **
1,157	"	P. Rasmussen	3- 7-24	120	1,800,000 **
1,158	"	J. S. Pederson	3-14-24	240	3,600,000 **
1,179	"	Manley-Moore Lumber Co.	7- 1-24	160	2,400,000 **
1,195	"	Buckley Lumber and Shingle Co.	12- 9-24	640	9,600,000 **
1;196	"	Trap Creek Logging Co.	1- 1-25	320	4,800,000 **
1,200	"	McMillan Lumber Co.	2-25-25	620	11,000,000 *
1,211	"	Lake Sawyer Lumber Co.	3-14-25	40	600,000 **
1,224	"	Johnson Brothers Co.	4-29-25	80	1,200,000 **
1,226	"	Silver Lake Railway and Lbr. Co.	5- 7-25	80	1,200,000 **
1,250	"	M. C. Miller Lumber Co.	9-12-25	640	9,600,000 **
1,252	"	Cabin Creek Lumber Co.	9-26-25	1,242	40,485,000 *
1,267	"	High Point Mill Co.	1-23-26	200	3,000,000 **
1,269	"	Manley-Moore Lumber Co.	1-25-26	300	4,500,000 **
1,279	"	Dalkena Lumber Co.	3-31-26	120	1,800,000 **
1,281	"	Manley-Moore Lumber Co.	4- 1-26	5,014	229,254,500 *
1,321	"	Pacific States Lumber Co.	3-10-27	4,687 1,920	99,105,000 **
1,325	"	A. V. Lumber Co.	4-27-27	320	4,800,000 **
1,344	"	I. G. Naylor	8- 1-27	160	2,400,000 **
1,353	"	Lake Sawyer Lumber Co.	10- 3-27	651	9,765,000 **
[fol. 58]					
1,371	Wash.	Covington Creek Lbr. Co.	1-23-28	560	8,400,000 **
1,374	"	J. Pinkham Lbr. Co.	2- -28	640	9,600,000 **
1,377	"	Preston Mill Co.	3- 8-28	640	9,600,000 **
1,382	"	Frank Inglis	4-30-28	640	9,600,000 **
1,387	"	High Point Mill Co.	5-31-28	360	5,400,000 **
1,398	"	George Jones	8- 3-28	200	3,000,000 **
1,410	"	Manley-Moore Lbr. Co.	7-31-28	2,680	157,299,465 **
1,427	Idaho	Atlas Tie Co.	11-30-28	600	9,000,000 **
1,444	Wash.	Lake Sawyer Lbr. Co.	4-16-29	80	1,200,000 **
1,445	"	John M. Stoger	4-19-29	200	2,010,250 *
1,452	"	North Bend Timber Co.	5-23-29	40	712,000 **
1,453	"	Wood and Iverson	6- 8-29	920	17,693,000 *
1,457	"	M. C. Miller Lumber Co.	6- 8-29	560	8,400,000 **
1,461	"	Gauthier Brothers	6-30-29	472	4,713,500 *
1,464	"	North Bend Timber Co.	8-17-29	281	4,215,000 **
1,469	"	Long Lake Lumber Co.	9-25-28	320	4,800,000 **
1,472	"	North Bend Timber Co.	11-25-29	240	3,600,000 **
1,476	"	Jones Lumber Co.	12-24-29	300	4,500,000 **
1,486	"	W. G. Jones	3-25-30	40	712,000 *
1,530	"	Ellensburg Lumber Co.	9- 2-31	80	1,200,000 **
*** 1,542	"	St. Paul and Tacoma Lbr. Co.	2- 1-32	390	5,850,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	"	Carbon River Shingle Co.	11-21-33	120	500,000 *
1,584	"	North Bend Timber Co.	6- 2-33	340	5,100,000 **
1,586	"	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,659	"	V. Gattavara	6-19-33	1,510	22,650,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,665	Wash.	Cedar Craft Products Co.	8-29-33	40	600,000 **
1,676	"	Kelso Veneer Co.	12-20-33	1,120	16,800,000 **
*** 1,710	"	T. A. Peterman	6- 6-34	645	1,300,000 *
1,715	"	Fairfax Lumber Co.	6- 8-34	3,690	55,350,000 **
1,728	"	Cascade Lumber Co.	10-31-34	302	2,987,000 *
1,731	"	St. Paul and Tacoma Lbr. Co.	12-18-34	18,820	282,300,000 **
1,731-1	"	" " " " " "	8- 1-36	400	6,000,000 **
1,731-2	"	" " " " " "	2-10-37	60	900,000 **
*** 1,731-3	"	" " " " " "	3- 8-37	588	34,609,000 *
*** 1,731-4	"	" " " " " "	10-23-46	320	4,800,000 **
1,749	"	Buckley Logging Co.	8-20-35	420	6,300.000 **
1,754	"	North Bend Timber Co.	10- 1-35	640	9,600,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	"	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,776	Wash.	West Fork Timber Co.	7-31-36	190	2,850,000 **
1,788	"	North Bend Timber Co.	10- 8-36	1,440	21,600,000 **
1,793	"	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,808	"	Western Lumber Co.	8-22-28	16,846	158,482,000 *
1,813	"	Wheeler Osgood Corp.	5- 4-37	160	1,200,000 *
1,814	"	McGoldrick Lumber Co.	5-20-37	640	9,600,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
*** 1,817	"	U. S. Plywood Corp.	6- 1-37	640	44,113,000 *
1,818	"	" " " "	6- 1-37	1,250	44,113,000 *
1,822	"	M. C. Miller Lumber Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Manufacturing Co.	12- 9-39	110	2,912,000 *
1,840	"	L. Marenakos	12- 1-37	640	9,600,000 **
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	"	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **

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1,885	Wash.	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lumber Co.	5-22-39	640	9,600,000 **
1,890	"	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lumber Co.	12-14-39	40	600,000 **
1,918	"	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	"	" " " "	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lumber Co.	6-13-40	480	7,200,000 **
1,935	"	Joe Walsh	6-27-40	1,280	19,200,000 **
1,937	"	Kosmas Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Brothers	10- 3-40	480	22,352,000 *
1,946	"	St. Paul and Tacoma Lbr. Co.	10-28-40	280	4,200,000 **
1,950	"	Seattle Export Lumber Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lumber Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller, Gregory, Inc.	3-17-41	142	2,130,000 **
1,965	"	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,966	"	L. D. McFarland Co.	4- 2-41	4,060	60,900,000 **
*** 1,975	"	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
1,979	"	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
1,997	Wash.	M. C. Miller Lumber Co.	10- 8-41	35	525,000 **
2,000	"	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,035	"	Timber Development Co.	4-13-42	640	11,679,000 *
*** 2,037	Idaho	Potlatch Forests, Inc.	12- 1-48	26,075	312,531,000 *
2,058	Wash.	Lincoln Lumber Co.	6- 2-42	111	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
*** 2,067	"	E. K. Bishop Lumber Co.	8-15-42	120	3,314,000 *
*** 2,072	"	Long Lake Lumber Co.	8-18-42	2,378	6,382,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
*** 2,080	"	Lyman Lumber Co. (Soundview Pulp)	1942	2,080	60,759,000 *
*** 2,088	"	Soundview Pulp	1-25-43	22,335	351,965,000 *
2,095	"	Tacoma Eastern Lbr. Co.	3-16-43	640	9,600,000 **
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,122	"	Lindberg and Hobi	8-30-43	300	4,500,000 **
*** 2,139	"	North Bend Timber Co.	1- 1-44	2,722	65,081,000 *
2,141	"	Diamond Match Co.	12-22-43	333	1,687,500 *
2,146	"	Lindberg and Hobi	12-15-43	2,548	38,220,000 **
2,163	"	Raymond Lumber Co.	6- 2-44	80	920,000 *
2,177	"	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
*** 2,181	"	Ellensburg Lumber Co.	10- 9-44	320	1,378,000 *
*** 2,194	"	Harter Lumber and Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	"	Soundview Pulp Co.	8-11-45	8,368	199,654,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	"	Soundview Pulp Co.	9-17-45	8,497	136,923,000 *
*** 2,240	"	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	"	M. C. Miller Lumber Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
[fol. 60]					
2,321	Wash.	St. Paul and Tacoma Lbr. Co.	3-27-47	80	1,200,000 **
*** 2,326	"	Keene and Keene	4- 4-47	1,200	18,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,405,000 **
*** 2,328	Wash.	M. C. Miller Lumber Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma Lbr. Co.	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood Co.	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	"	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,392	"	B. John Furniture Corp.	3- 6-47	115	3,916,000 *
*** 2,419	"	Olson Brothers Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	"	St. Paul and Tacoma Lbr. Co.	6- 7-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Anoys	8- 2-48	20	300,000 **
*** 2,472	"	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	"	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
		East End			
832	Mont.	J. Schiffman	10- 1-45	1,040	
*** 3,230	"	L. D. McFarland	12-10-45	640	9,600,000 **
3,361	"	Wine Glass Ranch	7-21-48	600	1,000,000 *
		N.W.I. Miscellaneous			
1821	(T & M 1333)	Donald Plummer	5-26-27	640	9,600,000 **
195	total contracts			384,957	10,541,459,371
39	active contracts			108,923	1,722,362,995
156	inactive contracts			276,024	8,819,096,376

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 61]

C

Number	State	Purchaser	Date	Acres	Board Feet
585	Wash.	August Von Bauhlin	6-12-11	640	9,600,000 **
609	"	Manley-Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
638	"	" " " "	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
690	"	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	"	Manley-Moore Lbr. Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Bros.	1-29-13	200	3,000,000 **
1,728	"	Cascade Lbr. Co.	10-31-34	302	2,987,000 *
1,808	Mont.	Western Lbr. Co.	8-22-28	16,846	158,482,000 *
2,122	Wash.	Linberg and Hobi	8-30-43	300	4,500,000 **
*** 2,472	"	Cascade Lbr. Co.	4-27-49	13,620	204,300,000 **
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
13	total contracts			51,028	669,669,000
1	active contract			13,620	204,300,000
12	inactive contracts			37,408	465,369,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contract

[fol. 62]

D

Number	State	Purchaser	Date	Acres	Board Feet
585	Wash.	August Von Bauhlin	6-12-11	640	9,600,000 **
609	"	Manley Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
638	"	" " " "	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
690	"	Cascade Lbr. Co.	12-29-13	1,120	16,800,000 **
693	"	Manley Moore Lbr. Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Bros.	1-29-13	200	3,000,000 **
1,808	Mont.	Western Lbr. Co.	8-22-28	16,846	252,690,000 **
2,122	Wash.	Linberg & Hobi	8-30-43	300	4,500,000 **
*** 2,139	"	North Bend Tbr. Co.	1- 1-44	2,722	65,081,000 *
*** 2,472	"	Cascade Lbr. Co.	4-27-49	13,620	204,300,000 **

D

Number	State	Purchaser	Date	Acres	Board Feet
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
13 Total Contracts				53,448	825,971,000
2 Active Contracts				16,342	269,381,000
11 Inactive Contracts				37,106	556,590,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 63]

E

Number	State	Purchaser	Date	Acres	Board Feet
21	Wash.	Northwestern Lbr. Co.	4-18-87	640	6,000,000 *
23	"	" " "	9- 1-87	1,280	19,200,000 **
1,200	"	McMillan Lbr. Co.	2-25-25	620	11,000,000 *
1,887	"	Joe Walsh & Cascade Lbr. Co.	5-15-39	320	4,800,000 **
*** 2,139	"	North Bend Tbr. Co.	1- 1-44	2,722	65,081,000 *
*** 2,180	"	V. C. Manahan	10- 9-44	320	4,800,000 **
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
8 Total Contracts				7,321	127,666,000
2 Active Contracts				3,042	69,881,000
6 Inactive Contracts				4,279	57,785,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

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F

Number	State	Purchaser	Date	Acres	Board Feet
855	Wash.	Cascade Lbr. Co.	7-10-17	320	4,800,000 **
904	"	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	"	Mutual Lbr. Co.	10-30-18	1,300	4,500,000 *
*** 1,097	"	J. Neils Lbr. Co.	8-21-42	4,082	18,000,000 *
1,530	"	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
*** 1,542	"	St. Paul and Tacoma	2- 1-32	392	5,880,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
*** 1,710	Wash.	T. A. Peterman	6- 6-34	645	1,300,000 *
1,731-1	"	St. Paul and Tacoma Lbr. Co.	8- 1-36	400	6,000,000 **
*** 1,731-3	"	" " " " " "	8- 8-37	588	34,609,000 *
*** 1,731-4	"	" " " " " "	10-23-46	320	4,800,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lbr. Co.	5- 6-36	174	2,610,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,793	Wash.	Cabin Creek Lbr. Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
*** 1,817	"	U. S. Plywood	6- 1-37	640	44,113,000 *
1,818	"	" " "	6- 1-37	1,250	44,113,000 *
1,822	"	M. C. Miller Lbr. Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Bros. Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Mfg. Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *

F

Number	State	Purchaser	Date	Acres	Board Feet
1,884	Wash.	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,890	"	Pacific States Lbr. Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12-14-39	40	600,000 **
1,918	"	Wilkeson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	"	" " " "	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Bros.	10- 3-40	480	7,200,000 **
1,946	"	St. Paul and Tacoma Lbr. Co.	10-28-40	280	2,700,000 **
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,979	"	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **
*** 2,001	"	Seattle Export Lbr. Co.	10-24-41	620	17,603,000 *
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
*** 2,037	Idaho	Potlatch Forests, Inc.	12- 1-48	26,075	312,531,000 *
2,058	Wash.	Lincoln Lbr. Co.	6- 2-42	110	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
*** 2,067	"	E. K. Bishop Lbr. Co.	8-15-42	120	3,314,000 *
*** 2,072	"	Long Lake Lbr. Co.	8-18-42	2,378	6,382,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *

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*** 2,088	Wash.	Soundview Pulp	1-25-43	22,335	351,965,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,141	"	Diamond Match Co.	12-22-43	333	1,687,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
*** 2,162	"	Bloedel Donovan Lbr. Co.	4-17-44	320	4,800,000 **
*** 2,181	"	Ellensburg Lbr. Co.	10- 9-44	160	1,378,000 *
*** 2,194	"	Harter Lbr. & Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	"	Soundview Pulp	8-11-45	8,368	199,654,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	"	Soundview Pulp	9-17-45	8,497	136,923,000 *
*** 2,240	"	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	"	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,321	"	St. Paul and Tacoma	3-27-47	80	1,200,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
*** 2,328	Wash.	M. C. Miller Lbr. Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	"	Empire Millwork Co.	10-30-47	639	9,585,000 **

F

Number	State	Purchaser	Date	Acres	Board Feet
*** 2,419	Wash.	Olson Brothers Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	"	St. Paul and Tacoma	6- 7-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lbr. Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Anrys	8- 2-48	20	300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
		East End			
*** 3,361	Mont.	Wine Glass Ranch	7-21-48	600	1,000,000 *
89 Total Contracts				119,097	1,816,895,000
34 Active Contracts				84,613	1,220,072,000
55 Inactive Contracts				34,484	596,823,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 66]

G

Number	State	Purchaser	Date	Acres	Board Feet
753	Wash.	Isaac Garrison	3-16-15	640	9,600,000 **
822	Idaho	Dalkena Lbr. Co.	10-18-16	500	7,500,000 **
1,530	Wash.	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,715	Wash.	Fairfax Lbr. Co.	6- 8-34	3,690	55,350,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lbr. Co.	5- 6-36	174	2,610,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,793	Wash.	Cabin Creek Lbr. Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	"	M. C. Miller Lbr. Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Bros. Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Mfg. Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	"	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,890	"	Pacific States Lbr. Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12-14-39	40	600,000 **
1,918	"	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Tbr. Co.	1-11-40	1,820	61,771,000 *
1,924	"	" " " "	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller, Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,979	"	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **

G

Number	State	Purchaser	Date	Acres	Board Feet
2,006	Wash.	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,058	"	Lincoln Lbr. Co.	6- 2-42	110	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
*** 2,088	"	Soundview Pulp Co.	1-25-43	22,335	351,965,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,122	"	Lindberg & Hobi	8-30-43	300	4,500,000 **
*** 2,139	"	North Bend Timber Co.	1- 1-44	2,722	65,081,000 *
2,141	"	Diamond Match Co.	12-22-43	333	1,687,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
2,177	"	M. C. Miller Lbr. Co.	9- 5-44	640	11,436,661 *
*** 2,181	"	Ellensburg Lbr. Co.	10- 9-44	160	1,378,000 *
2,194	"	Harter Lumber & Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	"	Soundview Pulp Co.	8-11-45	8,368	199,654,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	"	Soundview Pulp Co.	9-17-45	8,497	136,923,000 *
[fol. 67]					
2,253	Wash.	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
*** 2,328	Wash.	M. C. Miller Lbr. Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	"	Empire Millwork Co.	10-30-47	639	9,585,000 **
*** 2,419	"	Olson Bros. Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	"	St. Paul & Tacoma	6- 7-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lbr. Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Aury's	8- 2-48	20	300,000 **
*** 2,472	"	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	"	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
		East End			
*** 3,230	Mont.	L. D. McFarland	12-10-45	640	9,600,000 **
*** 3,361	"	Wine Glass Ranch	7-21-48	600	1,000,000 *
79 Total Contracts				144,246	2,250,847,661
23 Active Contracts				63,175	1,181,101,000
56 Inactive Contracts				81,071	1,069,746,661

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 68] H

Number	State	Purchaser	Date	Acres	Board Feet
1,200	Wash.	McMillan	2-25-25	620	11,000,000 *
*** 1,945	"	Taylor Bros.	10- 3-40	480	22,352,000 *
*** 1,975	"	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
2,095	"	Tacoma & Eastern	3-16-43	640	9,600,000 **
2,122	"	Lindberg & Hobi	8-30-43	300	4,500,000 **
2,154	"	Crane Creek Logging Co.	4- 3-44	80	1,200,000 **
2,163	"	Raymond Lumber Co.	6- 2-44	80	920,000 *
7 Total Contracts				2,280	52,507,000
2 Active Contracts				560	25,287,000
5 Inactive Contracts				1,720	27,220,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 69] I

Number	State	Purchaser	Date	Acres	Board Feet
753	Wash.	Isaac Garrison	3-16-15	640	9,600,000 **
1,343	"	William Pierce	6-22-27	160	2,400,000 **
1,387	"	High Point Mill Co.	5-31-28	360	5,400,000 **
1,530	"	Ellensburg Lumber Co.	9- 2-31	80	1,200,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	"	Carbon River Shingle Co.	11-21-33	120	500,000 *
1,586	"	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,749	Wash.	Buckley Logging Co.	8-20-35	420	6,300,000 **
1,765	"	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	"	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,788	"	North Bend Timber Co.	10- 8-36	1,440	21,600,000 **
1,793	"	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,813	"	Wheeler Osgood Corp.	5- 4-37	160	1,200,000 *
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	"	M. C. Miller Lumber Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Manufacturing Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	"	Everett Pulp and Paper Co.	5-11-	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,890	"	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lumber Co.	12-14-39	40	600,000 **
1,918	"	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	"	North Bend Timber Co.	3-29-40	60	900,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Brothers	10- 3-40	480	22,352,000 *
1,954	"	Cabin Creek Lumber Co.	12-19-40	600	9,000,000 **
1,962	"	Mueller, Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lumber Co.	3-25-41	160	2,400,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
2,000	"	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,058	"	Lincoln Lumber Co.	6- 2-42	111	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *

Number	State	Purchaser	Date	Acres	Board Feet
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
2,177	"	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
2,194	"	Harter Lumber and Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
2,240	"	St. Paul and Tacoma	2-23-46	178	2,670,000 **
*** 2,268	"	M. C. Miller Lumber Co.	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
2,388	Wash.	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,434	"	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
51 Total Contracts				24,293	395,180,661
4 Active Contracts				3,200	97,623,000
46 Inactive Contracts				21,093	297,557,661

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 70]

Appendix III to Request

Leases of Mineral Lands

A

T&M Number	Purchaser	Date	Acreage
12	Jeremiah O'Conner	11- 3-94	160
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5- 4-84	100
201	Joseph McCabe	9-28-97	120
443	Bell and Price	1-28-05	40
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
*** 532	Three Forks Portland Cement Co.	12-22-08	1,000
734	P. F. McGavern & Martin J. Burns	8- 1-14	160
755	Edward Harsky, et al.	5-29-14	640
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
830	Frank C. Bailey	8-12-16	40
958	M. E. Jesseph	6- 2-19	350
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,118	Edward A. Morley	4-30-41	640
1,133	The Arquetite Products Co.	8- 1-23	80
1,211	Thomas Myles	12-15-25	640
1,247	Paul Leuschel	8- 1-25	120
1,304	The Kittitas Diatomite Co.	11- 1-26	80
1,307	Alex Allardyse	6-17-27	5,760
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,369	H. A. Helland & C. A. Dawson	9- 1-26	200
1,434	Phosphate Products Co.	8-27-24	560
1,567	R. B. Kenyon	1-27-33	640

A

T&M Number	Purchaser	Date	Acreage
1,706	G. Henry Bennet	6- 1-27	160
1,732	Mrs. Shingaburow Sato & S. Ogato	12-24-34	80
1,859	Coer D'Alene Extension Mines, Inc.	6-30-38	410
2,100	John A. Roos	5-11-43	4,800
2,109	H. B. Reser	3-17-41	160
*** 2,271	Homer H. Shepard & Robt. Lambert	6-18-46	120
2,278	Manufacturers Mineral Co.	10- 1-46	320
2,399	Silver Buckle Mining Co.	1-30-48	980
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,421	R. Giselius	4-30-34	160
*** 2,431	Ernest J. Petersen	7-12-49	1,280
*** 2,473	Mt. St. Helens Pumice Corp.	4-28-49	400
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
2,704	Carl H. Peterson	2-20-37	9,996
2,802	Anaconda Copper Mining Co.	4- 1-39	640
2,840	S. Standish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
2,986	O. F. Martin	8-23-41	160
3,023	Elmer Maddux	3- 9-42	160
3,030	Bryan F. Croghan	4- 9-42	160
3,033	Rupert Varech	4-16-42	640
3,038	Ernest Vetter	5- 4-42	640
3,045	L. F. Teutsch	7- 1-42	700
3,129	Mrs. E. Rice Myers	11-30-43	160
*** 3,129A	O. F. Martin	11- 1-48	160
*** 3,180	Martin Mining Co.	10-23-44	160
3,184	Thomas Myles, Jr.	11-25-44	160
[fol. 71]			
3,216A	Mike Di Lulo	12-15-45	400
*** 3,241	Manganese Products Co.	3-10-46	240
3,283	W. A. Noon	9- 5-46	1,070
*** 3,296	Arthur S. Fee	1- 3-47	160
3,302	J. A. Denney	4- 5-47	160
*** 3,328	Silica Products Co., Inc.	3- 1-48	1,920
*** 3,384	H. L. Poston	8- 1-49	200
*** 3,399	Dan J. Grant & A. R. Johnson	10- 6-49	160
62 Total Contracts			42,386
15 Active Contracts			6,250
47 Inactive Contracts			36,130

*** Active Contracts

B

[fol. 72]

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
*** 532	Three Forks Portland Cement Co.	12-22-08	1,000
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,133	The Arquetite Products Co.	8- 1-23	80

B

T&M Number	Purchaser	Date	Acres
1,304	The Kittitas Diatomite Co.	11- 1-26	80
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,567	R. B. Kenyon	1-27-33	640
1,732	Mrs. Shingaburaw & S. Agato	12-24-34	80
1,859	Coer D'Alene Extension Mines, Inc.	6-30-38	410
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,431	Ernest J. Petersen	7-12-49	1,280
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
3,129	Mrs. E. Rice Myers	11-30-43	160
19 Total Contracts			5,450
5 Active Contracts			2,570
14 Inactive Contracts			2,880

*** Active Contracts

[fol. 73]

C

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
443	Belland Price	1-28-05	40
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
734	P. F. McGavern & Martin J. Burns	8- 1-14	160
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
830	Frank C. Bailey	8-12-16	40
958	M. E. Jesseph	6- 2-19	350
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,118	Edward A. Morley	4-30-41	640
1,133	The Arquetite Products Co.	8- 1-23	80
1,247	Paul Leuschel	8- 1-25	120
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,369	H. A. Helland & C. A. Dawson	9- 1-26	200
1,434	Phosphate Products Co.	8-27-24	560
1,706	G. Henry Bennet	6- 1-27	160
1,732	Mrs. Shingaburow Sato & S. Agata	12-24-34	80
2,100	John A. Roos	5-11-43	4,800
*** 2,271	Homer H. Shepard & Robt. B. Lambert	6-18-46	120
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,421	R. Giselius	4-30-34	160
*** 2,516	The Corliss Kaiser Co.	11- 3-49	80
2,704	Carl H. Peterson	2-20-37	9,996
2,840	S. Stanish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
3,038	Ernest Vetter	5- 4-42	640
3,045	L. F. Teutsch	7- 1-42	700
3,216A	Mike DiLulo	12-15-45	400
3,283	W. A. Noon	9- 5-46	1,070
33 Total Contracts			24,556
5 Active Contracts			570
28 Inactive Contracts			23,986

*** Active Contracts

[fol. 74] D

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
778	Lucien F. McConike	4-15-15	640
795	O. W. Sinclair	3-27-16	80
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,133	The Arquetite Products Co.	8- 1-23	80
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,732	Mrs. Shingaburow Sato & S. Ogata	12-24-34	80
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
13 Total Contracts			2,120
3 Active Contracts			290
10 Inactive Contracts			1,830

*** Active Contracts

[fol. 75] E

T&M Number	Purchaser	Date	Acres
2,100	John A. Roos	5-11-43	4,800
*** 2,271	Homer H. Shepard & Robt. B. Lambert	6-18-46	120
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
2,704	Carl H. Peterson	2-20-37	9,996
2,840	S. Standish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
3,045	L. F. Teutsch	7- 1-42	700
3,216A	Mike DiLulo	12-15-45	400
3,283	W. A. Noon	9- 5-46	1,070
11 Total Contracts			19,526
1 Active Contract			120
10 Inactive Contracts			19,406

*** Active Contracts

[fol. 76] F

T&M Number	Purchaser	Date	Acres
2,278	Manufacturers Mineral Co.	10- 1-46	320
*** 2,412	" " "	3-11-48	50
*** 2,473	Mt. St. Helens Pumice Corp.	4-28-49	400
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
*** 3,241	Manganese Products Co.	3-10-46	240
*** 3,328	Silica Products Co., Inc.	3- 1-48	1,920
6 Contracts, Total			3,010
5 Active Contracts			2,690
1 Inactive Contract			320

*** Active Contracts

[fol. 77] APPENDIX IV TO REQUEST

Northwestern Improvement Company Contracts

Contract Nos.

70-N	2,678-N	3,030-N	3,230-N
194-N	2,681-N	3,037-N	3,232-N
413-N	2,685-N	3,041-N	3,233-N
656-N	2,692-N	3,042-N	3,236-N
787-N	2,724-N	3,046-N	3,237-N
793-N	2,731-N	3,054-N	3,238-N
833-N	2,734-N	3,055-N	3,239-N
897-N	2,750-N	3,056-N	3,241-N
918-N	2,757-N	3,066-N	3,242-N
1,038-N	2,775-N	3,070-N	3,287-N
1,112-N	2,780-N	3,073-N	3,288-N
1,122-N	2,778-N	3,081-N	3,289-N
1,156-N	2,807-N	3,082-N	3,290-N
1,166-N	2,813-N	3,092-N	3,293-N
1,284-N	2,816-N	3,094-N	3,294-N
1,344-N	2,821-N	3,098-N	3,296-N
1,467-N	2,822-N	3,100-N	3,297-N
1,545-N	2,823-N	3,101-N	3,298-N
1,598-N	2,832-N	3,102-N	3,299-N
1,679-N	2,838-N	3,104-N	3,304-N
1,709-N	2,846-N	3,105-N	3,305-N
1,719-N	2,854-N	3,106-N	3,306-N
1,839-N	2,860-N	3,108-N	3,308-N
1,845-N	2,872-N	3,113-N	3,245-N
1,897-N	2,873-N	3,114-N	3,247-N
1,926-N	2,874-N	3,115-N	3,252-N
1,930-N	2,886-N	3,117-N	3,253-N
1,959-N	2,891-N	3,118-N	3,254-N
1,975-N	2,892-N	3,119-N	3,255-N
1,989-N	2,902-N	3,120-N	3,260-N
1,995-N	2,920-N	3,132-N	3,261-N
1,997-N	2,928-N	3,133-N	3,265-N
1,998-N	2,930-N	3,135-N	3,275-N
2,023-N	2,932-N	3,136-N	3,281-N
2,056-N	2,943-N	3,137-N	3,283-N
2,064-N	2,945-N	3,138-N	3,284-N
2,082-N	2,947-N	3,146-N	3,309-N
2,095-N	2,951-N	3,149-N	3,311-N
2,108-N	2,955-N	3,153-N	3,312-N
2,117-N	2,957-N	3,162-N	3,318-N
2,238-N	2,962-N	3,165-N	3,320-N
2,247-N	2,965-N	3,167-N	3,321-N
2,248-N	2,967-N	3,170-N	3,322-N
2,249-N	2,971-N	3,173-N	3,324-N
2,251-N	2,972-N	3,185-N	3,325-N
2,264-N	2,980-N	3,188-N	3,326-N
2,289-N	2,984-N	3,189-N	3,329-N
2,307-N	2,986-N	3,191-N	3,331-N
2,352-N	2,988-N	3,192-N	3,332-N
2,380-N	2,991-N	3,195-N	3,333-N
2,381-N	2,995-N	3,199-N	3,336-N
2,502-N	3,000-N	3,200-N	3,339-N
2,504-N	3,002-N	3,201-N	3,340-N
2,508-N	3,003-N	3,202-N	3,345-N
2,552-N	3,004-N	3,206-N	3,347-N
2,574-N	3,008-N	3,209-N	3,348-N
2,597-N	3,017-N	3,214-N	3,350-N
2,628-N	3,018-N	3,217-N	3,352-N
2,651-N	3,020-N	3,220-N	3,353-N
2,663-N	3,022-N	3,223-N	3,355-N
2,666-N	3,029-N	3,225-N	3,356-N

3,357-N
3,358-N
3,359-N

[fol. 78] Northern Pacific Railway Company—Wyoming Contracts

Contract Nos.

6,551
7,648
7,913
8,832
9,023
9,625
9,736
9,737
11,308
11,324
11,345

[fol. 79] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

1,133	4,955	6,470	7,792
1,137	4,956	6,482	7,825
1,543	4,964	6,499	7,839
1,629	4,969	6,512	7,854
2,029	5,000	6,547	7,856
2,059	5,051	6,626	7,883
2,106	5,056	6,681	7,959
2,644	5,078	6,712	7,993
2,881	5,102	6,717	8,001
3,000	5,125	6,745	8,014
3,060	5,137	6,764	8,080
3,127	5,190	6,787	8,083
3,194	5,202	6,799	8,086
3,207	5,241	6,921	8,091
3,241	5,295	6,948	8,096
3,394	5,315	7,021	8,097
3,536	5,333	7,085	8,102
3,598	5,574	7,150	8,106
3,630	5,588	7,170	8,107
3,679	5,616	7,185	8,138
3,733	5,638	7,216	8,155
3,814	5,738	7,217	8,163
3,990	5,792	7,229	8,189
4,001	5,809	7,232	8,198
4,022	5,814	7,250	8,206
4,063	5,825	7,300	8,218
4,080	5,354	7,322	8,237
4,099	5,355	7,328	8,238
4,107	5,382	7,329	8,246
4,122	5,431	7,362	8,267
4,123	5,453	7,387	8,270
4,171	5,554	7,392	8,302
4,196	5,555	7,393	8,303
4,215	5,557	7,408	8,307
4,231	5,560	7,430	8,315
4,251	5,880	7,443	8,316
4,271	5,889	7,450	8,320
4,326	5,920	7,451	8,324
4,357	5,924	7,455	8,328
4,428	5,954	7,475	8,435
4,437	5,964	7,488	8,458
4,450	5,987	7,493	8,464
4,533	6,025	7,502	8,479
4,637	6,051	7,517	8,522
4,643	6,079	7,557	8,541
4,647	6,109	7,577	8,583
4,738	6,125	7,594	8,604
4,763	6,133	7,622	8,612
4,781	6,134	7,655	8,363
4,789	6,139	7,657	8,367
4,815	6,271	7,700	8,371
4,827	6,282	7,701	8,398
4,861	6,314	7,709	8,414
4,865	6,346	7,713	8,416
4,888	6,381	7,725	8,419
4,950	6,403	7,731	8,427
	6,436	7,742	8,614

[fol. 80] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

8,622	9,363	9,788	10,167
8,644	9,376	9,789	10,168
8,665	9,379	9,792	10,169
8,678	9,380	9,796	10,170
8,684	9,396	9,806	10,175
8,685	9,420	9,811	10,176
8,686	9,431	9,814	10,186
8,688	9,441	9,815	10,191
8,717	9,464	9,832	10,208
8,732	9,511	9,834	10,213
8,782	9,518	9,842	10,218
8,827	9,519	9,845	10,219
8,828	9,520	9,848	10,230
8,843	9,528	9,865	10,231
8,845	9,533	9,866	10,236
8,846	9,546	9,871	10,238
8,885	9,465	9,873	10,248
8,907	9,469	9,876	10,249
8,909	9,475	9,928	10,252
8,917	9,485	9,943	10,264
8,928	9,502	9,958	10,267
8,943	9,504	9,959	10,268
8,990	9,507	9,973	10,270
9,017	9,508	9,987	10,274
9,018	9,509	9,990	10,275
9,044	9,564	9,993	10,279
9,080	9,566	9,998	10,284
9,085	9,573	9,999	10,285
9,093	9,577	10,001	10,288
9,108	9,578	10,004	10,293
9,112	9,583	10,005	10,298
9,114	9,584	10,008	10,299
9,134	9,587	10,010	10,300
9,163	9,588	10,017	10,301
9,166	9,590	10,019	10,307
9,167	9,610	10,031	10,315
9,172	9,614	10,033	10,317
9,208	9,620	10,037	10,321
9,213	9,647	10,050	10,323
9,236	9,650	10,055	10,324
9,248	9,660	10,079	10,327
9,264	9,662	10,092	10,337
9,267	9,663	10,093	10,338
9,268	9,664	10,114	10,342
9,285	9,682	10,119	10,343
9,287	9,706	10,123	10,345
9,303	9,723	10,133	10,346
9,305	9,727	10,137	10,348
9,314	9,735	10,142	10,358
9,316	9,744	10,143	10,366
9,331	9,745	10,146	10,367
9,332	9,746	10,149	10,368
9,347	9,765	10,150	10,370
9,349	9,777	10,153	10,375
9,350	9,786	10,157	10,378
			10,371

[fol. 81] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

10,382	10,585	10,832	11,036
10,384	10,587	10,836	11,039
10,385	10,588	10,839	11,040
10,387	10,596	10,840	11,043
10,388	10,597	10,841	11,046
10,389	10,599	10,846	11,047
10,391	10,607	10,853	11,048
10,393	10,610	10,857	11,049
10,400	10,614	10,864	11,053
10,403	10,620	10,865	11,055
10,405	10,629	10,878	11,061
10,412	10,631	10,881	11,062
10,425	10,632	10,885	11,065
10,426	10,635	10,886	11,067
10,430	10,641	10,893	11,072
10,433	10,642	10,898	11,075
10,437	10,651	10,899	11,076
10,439	10,657	10,902	11,081
10,440	10,659	10,914	11,083
10,446	10,660	10,915	11,086
10,453	10,661	10,917	11,088
10,454	10,666	10,923	11,091
10,457	10,668	10,924	11,092
10,462	10,673	10,927	11,094
10,473	10,675	10,928	11,095
10,475	10,677	10,935	11,098
10,480	10,680	10,936	11,101
10,481	10,681	10,946	11,103
10,482	10,690	10,948	11,105
10,488	10,692	10,952	11,110
10,489	10,693	10,960	11,118
10,491	10,695	10,961	11,123
10,493	10,700	10,968	11,124
10,495	10,704	10,972	11,126
10,496	10,705	10,973	11,127
10,497	10,706	10,976	11,133
10,501	10,707	10,985	11,134
10,506	10,713	10,986	11,135
10,509	10,718	10,987	11,138
10,514	10,731	10,989	11,143
10,522	10,744	11,001	11,144
10,524	10,756	11,003	11,145
10,536	10,759	11,006	11,146
10,540	10,762	11,007	11,147
10,541	10,770	11,011	11,153
10,543	10,771	11,013	11,154
10,548	10,774	11,014	11,156
10,553	10,782	11,015	11,162
10,562	10,786	11,016	11,163
10,563	10,788	11,018	11,164
10,568	10,800	11,021	11,165
10,570	10,811	11,022	11,167
10,574	10,812	11,027	11,168
10,579	10,819	11,029	11,169
10,581	10,827	11,030	11,170
10,583	10,831	11,033	11,171

[fol. 82] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

11,172	11,278	11,387	11,473
11,173	11,279	11,399	11,474
11,175	11,282	11,400	11,475
11,176	11,285	11,401	11,476
11,177	11,289	11,402	
11,178	11,293	11,405	
11,179	11,294	11,406	
11,182	11,295	11,407	
11,185	11,314	11,409	
11,186	11,315	11,410	
11,192	11,321	11,411	
11,193	11,322	11,413	
11,195	11,323	11,414	
11,196	11,325	11,415	
11,197	11,326	11,418	
11,201	11,328	11,419	
11,204	11,330	11,420	
11,208	11,331	11,421	
11,209	11,333	11,422	
11,214	11,334	11,423	
11,215	11,336	11,424	
11,216	11,337	11,425	
11,217	11,343	11,427	
11,218	11,347	11,428	
11,221	11,348	11,430	
11,223	11,351	11,431	
11,229	11,352	11,433	
11,230	11,353	11,436	
11,233	11,354	11,437	
11,235	11,355	11,438	
11,238	11,356	11,439	
11,239	11,360	11,440	
11,240	11,361	11,444	
11,241	11,363	11,445	
11,248	11,364	11,446	
11,250	11,366	11,447	
11,254	11,367	11,448	
11,260	11,368	11,449	
11,262	11,369	11,450	
11,264	11,371	11,451	
11,266	11,372	11,452	
11,267	11,373	11,454	
11,269	11,388	11,455	
11,273	11,389	11,456	
11,274	11,390	11,457	
11,275	11,393	11,458	
11,276	11,396	11,459	
11,299	11,397	11,460	
11,300	11,398	11,461	
11,302	11,374	11,462	
11,303	11,375	11,463	
11,304	11,376	11,464	
11,305	11,379	11,465	
11,307	11,380	11,466	
11,312	11,381	11,467	
11,313	11,384	11,468	
	11,386	11,469	
		11,470	

[fol. 83] APPENDIX V TO REQUESTS

Oil and Gas Permits and Leases

T & M Number	Party	Date
847	W. R. Calvert	5-5-17
903	Charles Wrightman	4-11-18
952	Ben Grote and H. Vincent	5-20-19
1,083	A. M. Chisholm	
1,276	Doney Hager	2-20-26
1,282	Geo. Mottman	4-29-26
1,351	Ajulune Oil and Dev. Co.	10-1-27
1,439	Flaming Geyser Gas Co. (NWI)	1-20-29
1,448	Miocene Petroleum Co.	4-15-29
1,449	Miocene Petroleum Co.	4-15-29
1,517	Western Gas and Oil Co.	12-5-30
1,523	R. B. Newbern	5-19-31
1,526	Geo. Mottman	7-9-31
1,569	E. Combs	1-31-33
1,690	H. S. Sachett (NWI)	3-1-34
1,718	G. H. Pierce	5-25-34
1,808	Blue Light Gas and Oil Co.	2-25-37
1,819	Lambert Whitehurst	6-1-37
1,837	California Co.	
1,910	H. J. Jameson	10-11-39
***2,[illegible]2	Paul John Hunt	8-11-44
2,238	((NWI)	8-31-45
2,239	(Texas Co. (NWI)	8-31-45
2,260	((NWI)	4-30-46
2,304	Union Oil Co.	11-22-46
2,306	Union Oil Co.	11-22-46
2,367	C. M. Eastwood & G. W. Ludwig	8-8-47
***2,396	Union Oil Co. (NWI)	12-31-47
MONTANA		
1,058-A	Tri-City Oil Co.	9-1-20
1,084	Ohio Oil Co.	1-3-21
1,085	Ohio Oil Co.	1-3-21

Oil and Gas Permits and Leases

T & M Number	Party	Date
MONTANA		
1,086	Ohio Oil Co.	1-3-21
***1,694	Ohio Oil Co.	4-1-27
1,697	Lincoln Oil Co.	4-29-27
***1,856	Mont. Dakota Utilities Co.	8-3-28
***1,876	Mont. Dakota Utilities Co.	1-9-29
1,970	Carter Oil Co.	7-1-29
***2,694	Tarrant & Johnson	1-3-27
***2,936	Maris & Hunt	10-18-40
3,097	Carter Oil Co.	4-15-43
***3,265	Wm. M. Hanlon	6-24-46
***3,280	Kidd & Cherry	10-14-46
***3,284	Central Mont. Oil Co.	9-14-46
***3,331	Frank H. Becker	8-14-47
***3,373	Texas Co.	3-15-49
***3,376	Amerada Petroleum Co.	4-18-49
***3,411	Texas Co.	12-15-49
[fol. 84]		
WYOMING		
5	Old Colony Oil Co.	4-1-19
7	J. Henderson	4-1-27
8	J. Henderson	5-22-29
*** 9	Continental Oil Co. (Kirk)	6-1-29
*** 11	Continental Oil Co.	11-1-32
*** 14	Resolute Oil Co.	7-13-37
*** 14A	Resolute Oil Co.	11-1-44
*** 21	Mackinnie Oil & Drilling and Continental Oil Co.	8-1-43
*** 24	Carter Oil Co.	6-15-44
28	Fred Goodstein & Continental Oil Co.	4-30-45
*** 29	Continental Oil Co.	12-10-46
30	Seaboard Oil Co.	3-23-48
31	Fred Goodstein & Continental Oil Co.	7-15-49

***Active Contracts

[fol. 85] APPENDIX VI TO REQUESTS

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
2	Washington Mining & Dev. Co.	10-17-91
2	Washington Imp. Co.	7-1-89
2	John Kangley	1889
2	Wilkeson Coal & Coke Co.	6-1-93
4	So. Prairie Coal Co.	7-1-89
6	Tacoma Coal Co.	6-20-84
8	Alton Coal Co.	11-20-91
9	Green River Coal & Coke Co.	7-20-93
11	Eureka Coal Co.	10-2-94
63	Eureka Coal Co.	1-26-97
385	Issaquah Coal Co. (NWI)	1-1-01
388	Cannel Coal Co.	4-1-01
465	Pacific Coal & Oil	3-12-07
477	Fremont Coal Co. (NWI)	5-1-07
484	Independent Coal Co.	7-5-07
487	Coast Coal Co.	8-1-07
490	North Coast Colliery Co.	5-16-07
508	Sam Hyde	9-11-08
514	Commonwealth Coal Co.	10-16-08
515	Black Carbon Coal Co. (NWI)	10-16-08
519	H. Thompson	3-6-09
521	Geo. Bayne	3-30-09
525	Sam Hyde	5-20-09
546	Fred Stevens	1-3-10
551	J. H. Rose	8-8-10
538	Central Coal Co. (NWI)	2-2-10
557	Tanum Coal Co.	11-2-10
576	U.S. Coal Co. (NWI-NP)	5-29-11
578	J. S. McMiniemee	3-21-11
588	W. Oakes (NWI)	4-27-11
602	Busy Bee Mining Co.	6-6-11

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
636	American Coal Co.	7-1-12
638	Pacific Coast Coal	3-26-13
642	Deep Lake Coal Co. (NWI)	9-1-11
658	James Anderson	3-26-13
674	H. S. Matthews	8-20-13
686	Sam Hyde	12-8-13
738	Pocahontas Coal & Coke Co.	9-29-14
746	National Coal Company	1-1-15
782	Ind. Coal & Coke (NWI)	11-25-15
805	Joseph Swalwell	7-22-16
819	Carbon Hill Coal Co.	8-30-16
874	J. E. Jones (NWI)	11-8-17
884	Wash. Colliery Co. (NWI)	11-1-17
902	Pac. Coast Coal Co. (NWI)	5-1-18
909	Roslyn Fuel Co.	5-1-18
914	Geo. Rankin	6-10-18
915	Pacific Coast Coal Co.	6-17-18
919	C. J. Smith	9-18-17
926	C. J. Smith (NWI)	7-19-18
932	T. M. Tannett	10-22-18
951	Mashell Coal & Coke (NWI)	1919
[fol. 86]		
1,002	C. J. Smith	8-1-20
1,008	Andrew Reynolds (NWI)	12-22-20
1,023	T. W. Siddle	1-1-21
1,025	Carbon Coal & Clay (NWI)	1-1-21
1,042	Dale Coal Co.	1-27-22
1,053	Salton River Bituminous Coal Co.	1-1-21
***1,110	Fred & Gus Nies	3-22-21
1,115	John Richmond	3-29-23
1,121	Am. Smelting & Refining (NWI)	6-1-23
1,136	J. G. Parkin (NWI)	9-1-23
1,165	C. B. Niblock (NWI)	
1,174	Evan Jones	6-12-24
1,222	S. Mitsumasu	4-23-25

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
1,260	Abe Morris (NWI)	9-1-25
1,372	Andrew Reynolds	1-27-28
***1,395	Dale Coal Co.	4-1-28
1,400	Evan Collierie	7-1-28
1,450	James Bolde	5-21-29
1,479	E. R. Peoples	1-1-30
1,481	John Buesch	2-1-30
1,505	J. O. West	7-1-30
1,535	Morris Bros. Coal Mining	11-3-31
1,560	W. Kegler	
1,661	Geo. Savage	1-1-33
1,697	Roslyn Cascade Coal	3-5-34
1,782-1	Dale Coal Co.	5-1-36
1,790	Thomas Bevan	9-15-36
***1,856	Palmer Coking Coal Co.	6-4-38
1,991	Jonesville Coal Co.	9- -41
2,090	L. E. Thomas	1-1-43
2,216	Palmer Coking Coal Co.	10-1-45
2,232	J. B. Miller	1-18-46
2,234	Anderson Coal Mine	9-27-45
2,309	G. C. Olson	1-1-47
2,391	John Lonegan	12-29-47
***3,102	Jeffries Coal Co.	5-5-43
***3,268	Fred & Gus Nies	6-25-46
MONTANA—Northern Pacific		
492	Montana Coal & Coke Co.	1-1-07
545	Western Coal & Coke Co.	11-27-09
563	Julius Berg (Six Mile Coal Co.)	7-1-10
623	Ed Horsky	12-1-11
663	Lee Rouse	6-1-13
714	Frank O'Meara	2-2-14
715	Washington Montana Coal Co.	2-2-14
757	Eureka Dev. Co.	6-9-14
765	T. Nash, et al.	11-15-14

Coal Leases and Permits

T & M Number	Lessee	Date
MONTANA—Northern Pacific		
*** 743 & 790	Roundup Coal Co.	8-23-15
628	Oscar Nelson	6-1-12
809	Charles Augur	12,27-15
811	Iver Johnson	12-1-15
817	Ed O'Donnell	4-7-16
[fol. 87]		
1,045	Blair Collins Co.	6-1-20
1,079	John C. Graham	12-28-20
1,271	Jeffries Coal Mining Co.	9-1-23
1,442	C. D. Ray	11-1-23
1,643	Northwestern Mining & Fuel	7-1-26
1,735	Blair Collins Co.	12-1-27
1,819	Roundup Coal Mining Co.	9-1-28
2,019	Superior Coal Co.	3-1-30
2,957	R. D. Chamberlain	3-5-41
628	Oscar Nelson	6-1-12
699	John A. Murphy	12-1-13
717	E. M. Barnett	1-26-14
770	George Akers	12-29-14
889	Edward H. Kinsey	9-20-17
901	A. A. Morris	2-1-18
943	Wyoming-Montana Co.	12-19-18
989	Frank J. Stifel	9-1-19
1,283	Charles B. Foncanon	8-1-23
NORTH DAKOTA		
5,958	John F. Brodie	9-1-16
5,988	Lehigh Mining Co.	4-1-23
***5,993	Lehigh Briquetting Co.	8-1-27
NORTHWESTERN IMPROVEMENT CO. CONTRACTS		
9 (450)	W. H. Co.	12-2-05
11 (48)	Carbon Coal Co.	7-8-96
15 (333)	Miners Coal & Coke Co.	9-1-99
16 (363)	South Prairie Coal Co.	6-28-00
225 (482)	Fleet Coal Co.	8-31-07
*** 863-N	Frank J. Binek	
*** 915	Pacific Coast Coal Co.	

Coal Leases and Permits

T & M Number	Lessee	Date
NORTHWESTERN IMPROVEMENT CO. CONTRACTS		
1,038	Thomas Gray	11-20-15
1,271	Pacific Coast Coal Co.	6-17-18
1,277 (902)	J. E. Jones	5-1-18
1,295	T. M. Tennent	10-22-18
1,375	Edmund B. Hubard	1-31-20
1,437 (1002)	C. J. Smith	8-1-20
1,472 (1025)	Carbon Coal & Clay Co.	1-1-21
1,652 (1164)	John C. Eden	4-1-24
***1,661 & 2,066	George Savage	
1,692 (1217)	Ind. Coal & Coke Co.	1-1-25
***1,920	Hyde Coal Co.	
***1,962 (2404)	Renton Mining Co.	3-25-41
2,011 (1507)	Kangley West Coal Co.	11-29-30
2,083	Ray E. Ross	4-1-35
***2,085	Issaquah Coal Co.	
2,088	George Savage	1-1-33
2,131	R. A. Evans	4-8-36
***2,193 (2454)	James Bolde	1-1-45
***2,221	M. B. Cavanaugh	
2,303	Palmer Coking Coal Co.	6-4-38
***2,309	G. C. Olson	
***2,514	John L. Lanigan	12-29-47

***Active Contracts

[fol. 88] APPENDIX VII TO REQUESTS

Iron Ore

T & M Number	Lessee	Date	Acres
	Northern Pacific and Northwestern Improvement Co. Leases		
82-D	Butler Bros.	10-2-16	40
84-D	Republic Iron & Steel Co.	8-27-17	40
***428-D	Hanna Ore Mining	6-1-29	280
449-D	Charleson Iron Co.	9-1-32	80
485-D	Charleson Iron Co.	12-15-37	120
***487-D	Balkan Mining Co.	3-28-38	80
489-D	George H. St. Clair	9-10-38	140
489-D-1	Inland Steel Co.	10-10-38	60

Iron Ore

T & M Number	Lessee	Date	Acres
	Northern Pacific and Northwestern Improvement Co. Leases		
490-D	Carl Hedman	10-6-38	40
508-D	C. H. Taylor	3-10-43	40
***538-D	Pacific Isle Mining Co.	6-7-46	60
***546-D	Republic Steel Co.	8-15-47	20
***551-D	Pacific Isle Mining Co.	7-1-48	60
***555-D	W. S. Moore Co.	2-21-49	40
***557-D	W. S. Moore Co.	4-1-49	40
***561-D	Oliver Iron Mining Co.	7-1-49	40
***565-D	Hanna Coal & Ore Corp.	9-22-49	40
***566-D	W. S. Moore Co.	12-1-49	40
***567-D	Bennett Mining Co.	12-1-49	40
	Cuyuna Realty Co. Leases		
4	Biwango Mining Co.	5-11-16	80
*** 7A	R. M. Adams	10-1-23	80
	Assigned: Evergreen Mining Co.	6-2-24	
	Assigned: Evergreen Mines Co.	1-2-32	
9	Merrimac Mining Co.	6-13-14	80
9	Hill Mines Co.	9-30-16	280
14	E. J. Longyear Co.	8-28-15	80
*** 27	R. B. Whiteside	10-1-23	80
	Assigned: Hanna Iron Ore Co.	10-1-29	
*** 45	Hanna Iron Ore Co.	11-1-29	160
50	Evergreen Mines Co.	5-1-37	40
51	Ashland Mining Co.	4-20-38	40
	Cuyuna Realty Co. and Northwest Improvement Co. Joint Leases		
*** 57	Evergreen Mines Co.	11-19-42	160
	Cuyuna Realty Co., Crow Wing Realty Co., Mesabi Realty Co., and Northwest Improvement Co.		
*** 46	Hanna Iron Ore Co.	11-1-29	4,041

***Active Contracts

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE TAKING OF DEPOSITIONS—September 18, 1951

It Is Hereby Stipulated and Agreed by and between the undersigned counsel for the parties to the above entitled action that defendants may take the oral deposition of John M. Hughes of Hudson, Wisconsin, witness on behalf of defendants, at Room 1006 Northern Pacific Railway Building, 176 East Fifth Street, St. Paul, Minnesota, beginning at 10:00 A.M. on September 27, 1951, before Frank J. Gould, an officer authorized to administer oaths under the laws of the State of Minnesota.

Dated at Seattle, Washington, September 18, 1951.

C. L. Whittinghill, Attorneys for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

[fol. 90] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS UNDER RULE 36—Filed January 14, 1952

Defendants hereby respond as follows to plaintiff's Request for Admissions under Rule 36 served on defendants on August 10, 1951:

Response to Request I—Timber land sales.

By way of explanation of the form of this response defendants direct attention to the fact that plaintiff has

divided Request I and the Appendix thereto into eight subdivisions, lettered A through H, and that in many instances a sale listed in one subdivision of Appendix I is also listed in one or more other subdivisions. For example, of the 42 contracts listed in Appendix I-A, 40 also appear in Appendix I-B and 31 appear in Appendix I-E. Obviously, therefore, there are not only many cases of duplication of a particular contract throughout these subdivisions, but also a repetition of the acreage and timber volumes involved in the same contract. Actually, there is a total of 75 contracts, an estimated 2,144,177 acres and an estimated 21,544,766,000 feet, board measure, of timber listed in this request. In order to avoid confusion in this matter defendants attach hereto Exhibit A, which lists all of the contracts set forth in all of the subdivisions of Appendix I by [fol. 91] number, date and party, and under the alphabetical headings A through H there is indicated by an x opposite each contract the instances in which the plaintiff claims that a particular clause is contained in the contract.

Responding directly to Request I, defendants, except as hereinafter qualified or denied, admit the following matter contained in the Request:

1. The making of the contracts for sale of timber land listed on Exhibit A.

2. That the contract number, date and name of vendee are correctly shown on said exhibit.

3. That the estimates of acreage and timber volumes claimed by plaintiff to be involved in each contract, (which estimates are reproduced on Exhibit A for each contract), are reasonable estimates.

4. That the total number of acres and the total number of board feet are correctly computed in each subdivision of Request I and in each subdivision of the Appendix thereto.

5. That where so indicated by an x under the alphabetical headings on Exhibit A, the particular contract contains the underscored language, or a slight variation thereof, set forth in the corresponding subdivision of Request I.

6. Defendants admit that defendant Improvement Company or its predecessor made the sales in the instances where the contract number shown in the Appendix to Request I is prefixed by the letter N, and admit that the defendant Railway Company or its predecessor made the sales in all other instances.
[fol. 92] Defendants qualify the foregoing admissions and deny the matter in Request I to the extent and in the language contained under the heading "Qualifications and Denials" on said Exhibit A.

Further, defendants specifically deny:

(a) That in any case is the language underscored in any of the subdivisions of Request I a complete statement of a covenant or agreement contained in the contract;

(b) That in any case is the language underscored in any of the subdivisions of Request I a complete statement of the routing agreement contained in the contract; and

(c) That any combination of the clauses underscored in the various subdivisions of Request I which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request I.

Response to Request II—Timber sales.

By way of explanation of the form of this response defendants direct attention to the fact that plaintiff has divided Request II and the Appendix thereto into 9 subdivisions, lettered A through I, and that in many instances a contract listed in one subdivision of Appendix II is also listed in one or more other subdivisions. For example, of the 179 contracts listed in Appendix II-A, 95 are also listed in Appendix II-B and 12 appear in Appendix II-C. Here again, therefore, it is true that there are many cases of du-
[fol. 93] plication of acreage and timber volumes involved in the same contract. In the interest of clarity, defendants therefore attach hereto Exhibit B, which lists all of the

contracts listed in all of the subdivisions of Appendix II by number, date and party, and under the alphabetical headings A through I there is indicated by an x the instances in which the plaintiff claims that a particular clause is contained in the contract, and in the extreme left hand column of said exhibit there is indicated by an asterisk each instance in which the plaintiff claims a particular contract was "in effect and subsisting" or "active". Actually, there is a total of 210 contracts, 394,135 acres and 6,053,822,871 board feet involved in the contracts listed in Request II.

Responding directly to Request II, defendants, except as they hereinafter qualify or deny the same, do hereby admit the following matter contained in Request II:

1. The making of the contracts for sale of timber listed on Exhibit B.

2. That the contract number, date and name of vendee are correctly shown on said exhibit.

3. That the estimates of acreage and timber volumes claimed by plaintiff to be involved in each contract, (which estimates are reproduced on Exhibit B of each contract), are reasonable estimates.

4. That the total number of acres and the total number of board feet are correctly computed in each subdivision of Request II and in each subdivision of the Appendix thereto.

[fol. 94] 5. That where so indicated by an x under the alphabetical heading on Exhibit B the particular contract contains the underscored language, or a slight variation thereof, set forth in the corresponding subdivision of Request II.

6. That where an asterisk appears in the left-hand column of Exhibit B the contract listed on the same line was "in effect and subsisting" or "active".

7. Defendants admit that defendant Improvement Company or its predecessor made the sales in the instances where the contract number shown in the Appendix to Request II is prefixed by the letter N and admit that the

defendant Railway Company or its predecessor made the sales in all other instances.

The defendants qualify the foregoing admissions and deny the matter in Request II to the extent and in the language contained in the heading "Qualifications and Denials" on said Exhibit B.

Further, defendants specifically deny:

(a) That the language underscored in subdivisions C, D and F of said Request is a covenant or agreement or is a statement of any fact.

(b) That in any case is the language underscored in any of the subdivisions of Request II a complete statement of a covenant or agreement contained in the contract;

(c) That in any case is the language underscored in any of the subdivisions of Request II a complete statement of the routing agreement contained in the contract; and

[fol. 95] (d) That any combination of the clauses underscored in the various subdivisions of Request II which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request II.

Response to Request III—Mineral Land Leases.

In explanation of the form of this response defendants direct attention to the fact that plaintiff has divided Request III and the Appendix thereto into six subdivisions, lettered A through F, and that in many instances a lease listed in one subdivision of Appendix III is also listed in one or more other subdivisions, with a consequent repetition of the same acreage through the various subdivisions. Actually, there is a total of 63 leases and 42,466 acres covered by this Request. In the interest of clarity, therefore, defendants attach hereto Exhibit C, which lists all of the leases listed in all of the subdivisions of Appendix III by number, date and lessee and under the alphabetical headings A through F there is indicated by an x the in-

stances in which the plaintiff claims that a particular clause is contained in the lease. There is also indicated by an asterisk in the extreme left-hand column on said Exhibit C the instances in which plaintiff claims a particular lease was "in effect and subsisting" or "active".

Responding directly to Request III, defendants, except as they hereinafter qualify or deny, do hereby admit the [fol. 96] following matter contained in said Request:

1. The making of the leases listed on Exhibit C.

2. That the lease number, date and name of lessee are correctly shown on said exhibit.

3. That the acreage claimed by plaintiff to be involved in each lease, (which acreages are reproduced on Exhibit C for each lease), is substantially correct.

4. That the following leases contained the language underscored in subdivision B of said Request, or a slight variation thereof:

T&M No.	Date of contract	Lessee
526	6-11-09	Montague J. Bond
1434	8-27-24	Phosphate Products Co.
1859	6-30-38	Coeur d'Alene Extension Mines, Inc.

5. That the following leases contained the language underscored in subdivision F of said Request, or a slight variation thereof:

T&M No.	Date of contract	Lessee
2278	10-1-46	Manufacturers Mineral Co.
2473	5-2-49	Mt. St. Helens Pumice Corp.
2516	11-3-49	The Corliss Kaiser Co.
3328	3-1-48	Silica Products Co., Inc.

6. That where an asterisk appears in the left-hand column of Exhibit C the lease listed on the same line was "in effect and subsisting" or "active".

7. That defendant Improvement Company or its predecessor made the leases in the instances where the lease

number shown in the Appendix to Request III is followed by the letters NWI and that defendant Railway Company or its predecessor made the leases in all other instances. [fol. 97] Defendants, except as admitted in 4 and 5 above, deny that any of the leases listed in any of the subdivisions of Appendix to Request III contained the language underscored in any of the subdivisions of Request III.

Further, defendants specifically deny:

(a) That the language underscored in subdivisions B, C, D and E of said Request is a covenant or agreement or is a statement of any fact.

(b) That in any case is the language underscored in any of the subdivisions of Request III a complete statement of a covenant or agreement contained in the contract;

(c) That in any case is the language underscored in any of the subdivisions of Request III a complete statement of the routing agreement contained in the contract; and

(d) That any combination of the clauses underscored in the various subdivisions of Request III which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request III.

Response to Request IV—Grazing Land Leases.

Responding to Request IV, defendants admit that during the period 1920 through 1948 there were under lease from one or the other of the defendants, or a predecessor of one of them, more than a million acres of grazing land and that each of such leases contained the covenant or agreement quoted in said Request, or a slight variation [fol. 98] thereof. Defendants also admit that during the year 1949 at least 1000 leases containing such covenant or agreement, including those listed in Appendix IV of said Request, covering more than a million acres of grazing lands, were in effect and subsisting.

Defendants deny that during each year 1920 through 1948 they or either of them or their predecessors or either of them made leases to others of more than a million acres of grazing lands.

Defendants deny that they or their predecessors were joined as parties to any of the leases described in Appendix to Request IV.

Response to Request V—Oil and Gas Leases.

Responding to Request V, defendants admit that during the period 1918 through 1949 they granted approximately 50 oil and gas permits and leases, including those listed in Appendix V of said Request, covering approximately 150,000 acres of land, and admit that each lease or permit, except as hereinafter qualified or denied, contained the covenant or agreement set forth in said Request, or a slight variation thereof.

Defendants further admit that during the year 1949 at least 19 oil and gas permits or leases containing such covenant or agreement, covering approximately 135,000 acres of land, were in effect and subsisting. Defendants do not know whether all of said lands are oil and gas lands and therefore deny that all of said leases covered oil and gas lands.

[fol. 99] Defendants further deny that the following leases contained paragraphs 1 and 2 of the covenants set forth in Request V:

T&M No.	Party
847	W. R. Calvert
903	Charles Wrightman
952	Ben Grote and E. Vincent
1083	A. M. Chisholm
1058 A	Tri-City Oil Co.
5	Old Colony Oil Co.

Defendants further deny that the following lease contains paragraph 1 of the covenant set forth in Request V:

T&M No.	Party
1282	Geo. Mottman

Defendants further deny that they or their predecessors were joined as parties to any of the leases described in the Appendix to Request V.

Response to Request VI—Coal Land Leases

Responding to Request VI, defendants, except as hereinafter qualified or denied, admit that one or the other of them during the period 1889 through 1949 granted all of the coal land leases listed in the Appendix to Request VI.

Defendants state it to be the fact that they are unable to find any record of the following leases listed in said Appendix to Request VI, and therefore deny the granting of the same:

T&M No.	Lessee	Date
(Washington)		
638	Pacific Coast Coal Co.	3-26-13
1110	Fred and Gus Nies	3-22-21
9	W. H. Co.	12- 2-05
11	Carbon Co.	7- 8-96
15	Miners Coal & Coke Co.	9- 1-99
[fol. 100]		
16	So. Prairie Coal Co.	6-28-1900
863 N	Frank J. Binek	no date
1038	Thos. Gray	11-20-15
1271	Pacific Coast Coal Co.	6-17-18
1277	J. E. Jones	5- 1-18
1295	T. M. Tennent	10-22-18
1375	Edmund B. Hubard	1-31-20
1437	C. J. Smith	8- 1-20
1472	Carbon Coal & Clay Co.	1- 1-21
1652	John C. Eden	4- 1-24
1692 N	Ind. Coal & Coke Co.	1- 1-25
1962	Renton Mining Co.	3-25-41
2404	Renton Mining Co.	3-25-41
2011	Kangley West Coal Co.	11-29-30
2454	James Bolde	1- 1-45
2083	R. E. Ross	4- 1-35
2088	Geo. Savage	1- 1-33
2131	R. A. Evans	4- 8-36
2303	Palmer Coking Coal Co.	6- 4-38
2514	John R. Lanigan	12-29-47

Defendants admit that the coal land leases, the granting of which is hereinabove admitted, cover a total of 78,709 acres, but state it to be the fact that of such acreage over one-half was covered by two or more leases listed in said Appendix at different intervals of time, and therefore defendants deny that during such period their total ownership of coal lands subject to lease was as much as 75,000 acres.

Defendants admit that the following coal land leases listed in said appendix contained the covenant or agreement, or a slight variation thereof, set forth in Request VI:

T&M No.	Lessee	Date
(Montana)		
3102	Jeffries Coal Co.	5- 5-43
3268	Fred & Gus Nies	6-23-26

Defendants admit that all of the coal land leases described in said Appendix as being active were in effect and subsisting during the year 1949, except the following:

[fol. 101]

T&M No.	Lessee	Date
(Washington)		
1110	Fred and Gus Nies	3-22-21
863 N	Frank J. Binek	no date
1962	Renton Mining Co.	3-25-41
2404	" " "	"
2454	James Bolde	1-1-45
2514	John R. Lanigan	12-29-47

Defendants, being unable to locate any record of the foregoing six leases, deny that said leases were in effect and subsisting during the year 1949. Further, defendants, being unable to find a record of said six leases, are unable to ascertain how many acres of coal lands were covered by leases in effect and subsisting during the year 1949, and therefore deny that such leases covered approximately 10,000 acres.

Except as hereinabove admitted, defendants deny that any of said coal land leases contained the covenant or agreement set forth in Request VI.

Defendants deny that they were joined as parties in any of such leases.

Response to Request VII—Iron Ore Land Leases

Responding to Request VII, defendants admit that during the period 1914 through 1949 one or the other of them or a subsidiary of one of the defendants granted the 30 leases listed in the Appendix to Request VII, covering substantially 6,461 acres of iron ore land, and that such leases contained the covenant or agreement set forth in Request VII.

Defendants admit that during the year 1949 at least 16 leases, containing such covenant or agreement and covering approximately 5,261 acres of iron ore land, were in effect and subsisting.

Defendants deny that they were joined as parties in [fol. 102] any of such leases.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Copy received Jan. 11, 1952.

Robert H. Weinstein, Counsel for plaintiff.

Duly sworn to by Harold G. Boggs (Jurat omitted in printing).

[fol. 103]

EXHIBIT "A" TO RESPONSE

(89)

RESPONSE TO REQUEST FOR ADMISSIONS

TIMBER LAND SALES

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	Qualifications and Denials
W-9652	3-12-23	Wash.	North Bend Lbr.Co.	3,133	46,985,000	x	x							
9713	4-22-24	"	Buckley Logging Co.	1,275	19,125,000	x	x			x				
9726	9-8-24	"	Carlson Logging Co.	1,640	13,000,000	x	x							
9766	11-20-25	"	Dalkena Lbr.Co.	2,991	16,725,000	x	x							
9769	12-21-25	"	Howe-McGibbon Tbr.Co	1,200	18,000,000	x	x							
9778	4-9-26	Wash.& Idaho	Panhandle Lbr.Co. Ltd.	4,609	37,230,000	x	x			x				
9897	5-24-29	Wash.	Eller Lbr.Co.	1,190	17,850,000	x	x							
10116	10-2-34	"	Wall Bros.Logging Co	558	8,370,000	x	x			x	x		x	
10139	8-20-35	"	Panhandle Lbr.Co.Ltd	1,864	27,960,000	x	x			x				
10143	11-1-35	"	No.Pac.Tbr.Oprs,Inc.	990	14,850,000	x	x			x	x		x	
10178	8-14-36	"	Seattle Export Lbr.Co	652	9,780,000	x	x							
10224	8-9-37	"	Tacoma-Eastern Tbr.Co	593	8,895,000	x	x					x		
10270	6-8-39	"	F.P.Etheridge	400	10,468,000	x	x			x	x		x	
10281	10-2-39	"	Cascade Tbr.Co.	2,236	100,000,000	x	x		x	x	x		x	
10285	11-10-39	"	St Paul & Tacoma Lbr.Co.	450	6,750,000	x	x			x				
10309	5-27-40	"	" "	240	2,380,000	x	x			x				
10320	9-11-40	"	Walton Lbr.Co.	640	30,480,000	x	x			x	x		x	
10331	11-12-40	"	St Paul & Tacoma Lbr.	640	9,600,000	x	x			x				
10332	11-14-40	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x			x	x		x	
10339	3-17-41	"	St Paul & Tacoma Lbr.	640	9,600,000	x	x			x				
10340 & N-482	4-1-41	"	" "	3,165	47,475,000	x	x			x				
10400	10-30-41	"	Bloedel-Donovan Lbr.Mills	305	4,575,000	x	x			x	x		x	
10412	2-1-42	"	St Paul & Tacoma Lbr.	1,194	17,910,000	x	x			x				
10429	7-15-42	"	E.D.Walton	640	9,600,000	x	x			x	x		x	
10447	2-9-43	"	St Paul & Tacoma Lbr.	642	9,630,000	x				x				
10466	8-30-43	"	" "	1,440	52,581,000	x	x			x	x	x	x	
10468	10-25-43	"	Clarence P.Wise			x								Not a timber sale. In Roza Irrigation Dist.
10579	3-29-45	"	St Paul & Tacoma Lbr	1,281	19,215,000	x	x			x	x	x	x	
10588	8-9-45	"	" "	640	9,600,000	x	x			x				
10682	1-20-47	"	" "	385	3,288,000	x	x			x	x	x		
10700	9-23-47	"	" "	643	9,645,000	x	x			x				
10753	9-13-48	"	" "	295	228,000	x	x			x				
N-213	1-7-28	"	" "	698	36,658,000	x	x			x				
N-262	9-26-29	"	" "	1,280	81,481,000	x	x							
N-343	4-27-34	"	" "	40	1,004,000	x	x			x				Cont.contains no routing clause.
N-410	7-10-37	"	" "	560	18,273,000	x	x			x				
N-415	11-5-37	"	" "	4,333	154,115,000	x	x							
N-475	11-7-40	"	" "	640	37,061,000	x	x			x				
N-480	2-20-41	"	" "	360	15,493,000	x	x							

(90)

[fol. 104]

TIMBER LAND SALES
Sheet 2

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	Qualifications and Denials
N-481	3-18-41	Wash.	St Paul & Tacoma Lbr.Co.	708	30,601,000	x	x			x				
N-482	4-1-41	"	" "	1,408	67,261,000	x	x			x				
N-589	2-7-46	"	" "	640	49,497,000	x	x			x				
2472	7-1-97	Mont.	Big Blackfoot Milling Co.	41,152	167,241,000		x				x			Neither B nor F in routing clause
2732	6-14-98	"	" "	10,124	41,143,000		x				x			"
3881	8-31-01	"	" "	150,432	611,355,000		x				x			"
4023	3-31-02	"	" "	184,375	571,164,000		x				x			"
4535	6-30-03	"	" "	620,747	2,700,000,000		x				x			"
4734	6-30-04	"	" "	1,600	9,440,000		x				x			"
4932	9-7-07	"	" "	11,927	53,017,500		x				x			"
5861	10-30-09	"	" "	5,689	17,797,000		x				x			"
9645	12-15-22	Wash.	J.Neils Lbr.Co.	4,148	62,220,000		x			x				
9758	8-28-25	"	White River Lbr.Co.	8,676	130,140,000		x	x						
9800	9-8-26	"	J.Neils Lbr.Co.	120	1,800,000		x			x				
9936	2-25-39	"	Pac.Natl Lbr.Co.	625	14,597,000		x							
10067	7-1-33	"	McGoldrick Lbr.Co.	8,536	48,850,000	x	x				x		x	Correct date 2-26-35
10152	2-3-36	"	Ralph Brindley, Trustee	64	960,000	x								
10154	2-29-36	"	Albert Miller	298	4,470,000	x		x						"B" not in contract
10168	7-1-36	"	T.A.Peterman	2,216	33,240,000	x								
10260	2-27-39	"	"	1,198	31,140,000	x								
10302	4-16-40	"	Lindberg & Hobi Co	36,385	545,775,000	x	x	x	x	x	x	x		
10319	8-28-40	"	T.A.Peterman	480	7,200,000	x								This cont.was never executed.
10346	5-29-41	"	"	4,904	73,560,000	x								
10447	2-9-43	"	St Paul & Tacoma Lbr.Co.	642	9,630,000	x				x				
10463	9-30-43	"	Lindberg & Hobi	840	12,600,000	x	x			x	x	x	x	
10464	8-30-43	"	T.A.Peterman	28,333	21,600,000	x	x				x		x	
10486	6-6-44	"	W.H.Lindberg	2,547	38,105,600	x	x	x	x	x	x	x	x	
N-150	3-24-24	"	St Paul & Tacoma Lbr	600	9,000,000	x								Carlisle Lbr.Co. cont. Not St P. & T.Lbr.Co.
N-281	6-5-30	"	Klement & Kennedy	643	9,045,000	x								
N-476	11-1-40	"	West Coast Plywood Co	641	9,615,000	x				x	x		x	
N-488	5-9-41	"	Mutual Lbr.Co.	201	3,015,000	x				x	x		x	
N-580	3-28-45	"	St Paul & Tacoma Lbr.	480	21,228,000	x								
2040 or 2047	1-20-38	Idaho	Winton Lbr.Co.	21,440	50,000,000	x				x	x		x	2040 is not Winton Lbr. Co.contract.
2089	5-8-45	"	Pack River Tbr.Co.	34,828	75,000,000	x	x			x	x	x	x	
10249	4-15-38	Wash.	Diamond Match Co.	9,168	53,380,000					x				
2066	9-26-40	Idaho	" " "	2,240	33,600,000					x				Correct date 10-14-40
	1-3-00	Wash.	Frederick Weyerhaeuser	900,000	14,981,000,000	x								
			Total:	2,144,177 acres										
				21,544,766,000 bd.ft.										

[fol. 105] EXHIBIT "B" TO RESPONSE

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RESPONSE TO REQUEST FOR ADMISSIONS

TIMBER SALES

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claimsare included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
T&M 3	2-19-95	Wash.	E.A.Stroup,et al	160	9,800,000	x									
13	5-2-88	"	St Paul & Tacoma	53,385	800,775,000	x	x								
17	7-18-87	"	White River Shingle Company	320	6,800,000	x	x								Appendix "B" lists footage as 4,800,000
55	11-18-96	Idaho	A.A.Crane & Goode	6,690	100,350,000	x	x								
64	12-31-96	"	" "	800	12,000,000	x	x								
261	2-19-97	"	Sand Point Lbr.Co.	25,000	375,000,000	x	x								
458	10-16-06	"	Humbird Lbr.Co.	10,560	37,140,000	x	x								
530	6-1-09	Wash.	Manley-Moore Lbr.Co.	200	3,000,000	x	x								"A" clause does not appear. Wn.Mfg.Co.contract - R/W for logging road assigned to Manley-Moore
553	1-13-10	"	" " " "	120	1,800,000	x	x								No routing clause Cont.with Ore-Wash. Navigation Co. RR R/W
585	6-12-11	"	August Van Banklin	640	9,600,000	x	x	x	x						No routing clause.
609	12-4-11	"	Manley-Moore Lbr.Co.	1,920	28,800,000	x	x	x	x						
632	9-4-12	"	Pacific States Lbr.Co.	560	8,400,000	x	x								
638	9-14-12	"	Manley-Moore Lbr.Co.	1,920	28,800,000	x	x	x	x						
648	12-21-12	"	Ellensburg Lbr.Co.	320	4,800,000	x	x	x	x						
679	9-15-13	"	Pacific States Lbr. Company	640	9,600,000	x	x								
690	12-29-13	"	Cascade Tbr.Co.	1,120	16,800,000	x	x	x	x						Cascade Lbr.Co.
693	12-1-13	"	Manley-Moore Logging Company	1,920	28,800,000	x	x	x	x						Reconveyed to NP Ry.Co.
744	1-29-13	"	Miller Brothers	200	3,000,000	x	x	x	x						Correct date 1-29-15
753	3-16-15	"	Issac Garrison	640	9,600,000	x						x	x		"G" does not appear in contract.
809	7/31/16	"	Pac.States Lbr.Co.	840	12,600,000	x	x								
816	9-30-16	"	Somers Bros.Mfg.Co.	4,650	66,316,995	x	x								
822	10-18-16	Idaho	Dalkena Lbr.Co.	500	7,500,000	x	x					x			"G" does not appear in contract
823	10-18-16	"	" " "	280	4,200,000	x	x								
855	7-10-17	Wash.	Cascade Lbr.Co.	320	4,800,000	x				x					
904	5-10-16	"	Hanaford Creek Lg.Co.	1600	24,000,000	x	x			x					
931	10-30-18	"	Mutual Lbr.Co.	1,300	4,500,000	x	x			x					
1026	4-28-21	"	W.G.McAvoy	80	1,346,500	x	x								
1050	3-27-22	"	Lake Sawyer Lbr.Co.	120	1,800,000	x	x								
1078	6-16-22	"	E.P.Nevkirchen	80	1,200,000	x	x								
1107	3-29-23	"	Allen & Nelson Mill Co.	300	4,500,000	x	x								
1110	4-18-23	"	Seaboard Tbr.Co.	600	9,000,000	x	x								
1119	5-25-23	"	R. Rasmussen	80	1,200,000	x	x								
1124	6-20-23	"	Lake Sawyer Lbr.Co.	560	8,400,000	x	x								
1144	11-5-23	"	" " "	600	9,000,000	x	x								
1147	12-15-23	"	Manley-Moore Lbr.Co.	880	13,200,000	x	x								
1154	2-25-24	"	North Palix Shgl.& Lbr.Co.	160	2,400,000	x	x								

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TIMBER SALES -
Sheet 2.

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H I	Qualifications and Denials
T&M 1157	3-7-24	Wash.	P.Rasmussen	120	1,800,000	x	x							
1158	3-14-24	"	J.S.Pedersen	240	3,600,000	x	x							
1179	7-1-24	"	Manley-Moore Lbr.Co.	160	2,400,000	x	x							
1195	12-9-24	"	Buckley Lbr. & Shgl.Co.	640	9,600,000	x	x							
1196	1-1-25	"	Trap Crk Log.Co.	320	4,800,000	x	x							
1200	2-25-25	"	McMillan Lbr.Co..	620	11,000,000	x	x			x			x	E & H clause not found in contract.
1211	3-14-25	"	Lake Sawyer Lbr.Co.	40	600,000	x	x							
1224	4-29-25	"	Johnson Bros.Co.	80	1,200,000	x	x							
1226	5-7-25	"	Silver Lake Ry. & Lbr.Co.	80	1,200,000	x	x							
1250	9-12-25	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x							
1252	9-26-25	"	Cabin Creek Lbr.Co.	1,242	40,485,000	x	x							
1267	1-23-25	"	High Point Mill Co.	200	3,000,000	x	x							
1269	1-25-26	"	Manley-Moore Lbr.Co.	300	4,500,000	x	x							
1279	3-31-26	"	Dalkena Lbr.Co.	120	1,800,000	x	x							
1281	3-1-26	"	Manley-Moore Lbr.Co.	5,014	229,254,000	x	x							
1321	3-10-27	"	Pac.States Lbr.Co.	6,607	99,105,000	x	x							No routing clause
1325	4-27-27	"	A.V.Lbr.Co.	320	4,800,000	x	x							
1343	6-22-27	"	Wm. Pierce	160	2,400,000	x								Cont.covers cordwood only
1344	8-1-27	"	I.G.Naylor	160	2,400,000	x	x							
1353	10-3-27	"	Lake Sawyer Lbr.Co.	651	9,765,000	x	x							
1371	1-23-28	"	Covington Crk.Lbr.Co.	560	8,400,000	x	x							
1374	2-18-28	"	J.Pinkham Lbr.Co.	640	9,600,000	x	x							
1377	3-8-28	"	Preston Mill Co.	640	9,600,000	x	x							
1387	5-31-28	"	High Point Mill Co.	360	5,400,000	x	x						x	"I" clause not in cont.
1398	8-3-28	"	George Jones	200	3,000,000	x	x							
1410	7-31-28	"	Manley-Moore Lbr.Co.	2680	157,299,465	x	x							
1444	4-16-29	"	Lake Sawyer Lbr.Co.	80	1,200,000	x	x							
1445	4-19-29	"	John M.Stoger	200	2,010,250	x	x							
1452	5-23-29	"	North Bend Tbr.Co.	40	600,000	x	x							
1453	6-8-29	"	Wood & Iverson	920	17,693,000	x	x							
1457	6-8-29	"	M.C.Miller Lbr.Co.	560	8,400,000	x	x							
1461	7-30-29	"	Gauthier Bros.	472	4,713,500	x	x							Cont.made to Chas.A.Lau
1464	8-17-29	"	North Bend Tbr.Co.	281	4,215,000	x	x							
1469	9-25-29	"	Long Lake Lbr.Co.	320	4,800,000	x	x							
1472	11-25-29	"	North Bend Tbr.Co.	240	3,600,000	x	x							
1476	12-24-29	"	Jones Lbr.Co.	300	4,500,000	x	x							
1486	3-25-30	"	W.G.Jones	40	712,000	x	x							
1530	9-2-31	"	Ellensburg Lbr.Co.	80	1,200,000	x	x			x	x	x		
1542	2-1-32	"	St Paul & Tacoma	390	5,850,000	x	x			x				Canceled 1942
1557	8-8-32	"	V.Gattavara	320	4,800,000	x	x			x	x	x		
1568	1-26-33	"	Carbon River Shgl Co.	120	1,800,000	x	x						x	
1584	6-2-33	"	North Bend Tbr.Co.	340	5,100,000	x	x							
1586	6-6-33	"	Buckley Lg.Co.	240	3,600,000	x	x						x	"I" not in cont.
1659	6-19-33	"	V.Gattavara	1,510	22,650,000	x	x							

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TIMBER SALES
Sheet 3

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
T&M 1660	7-1-33	Idaho	L. Cardiff	4,059	60,885,000	x	x				x	x		x	
1676	12-20-33	Wash.	Kelso Veneer Co.	1,120	16,800,000	x	x								"A" not in cont.
* 1710	6-6-34	"	T.A.Peterman	645	1,300,000	x	x				x				Inactive 1949
1715	6-8-34	"	Fairfax Lbr.Co.	3,690	55,350,000	x	x					x			"A" not in cont.
1728	11-5-34	"	Cascade Lbr.Co.	302	2,987,000	x	x	x							No routing clause
1731	12-18-34	"	St Paul & Tacoma	18,820	282,300,000	x	x								
1731-1	8-1-36	"	" "	400	6,000,000	x	x				x				
1731-2	2-10-37	"	" "	60	900,000	x	x								
* 1731-3	3-8-37	"	" "	588	34,609,000	x	x				x				Expired 1947
* 1731-4	10-22-46	"	" "	320	4,800,000	x	x				x				Inactive 1949
1749	8-20-35	"	Buckley Logging Co.	420	6,300,000	x	x							x	"I" not in cont.
1754	10-1-35	"	North Bend Tbr.Co.	640	9,600,000	x	x								
1761	3-9-36	"	Diamond Match Co.	640	9,600,000	x	x				x	x			
1765	5-6-36	"	Cabin Creek Lbr.Co.	174	2,610,000	x	x				x	x		x	
1766	5-18-36	"	Lewis Lbr.Co.	320	4,800,000	x	x							x	
1771	5-28-36	Idaho	L.Cardiff	160	2,400,000	x	x				x	x			
1776	7-31-36	Wash.	West Fork Tbr.Co.	190	2,850,000	x	x								
1788	10-8-36	"	North Bend Tbr.Co.	1,440	21,600,000	x	x							x	"I" not in cont.
1793	11-23-36	"	Cabin Creek Lbr.Co.	170	2,550,000	x	x				x	x		x	
1807	3-10-37	"	Diamond Match Co.	320	4,800,000	x	x				x	x			
1808	8-22-28	Mont.	Western Lbr.Co.	10,846	158,482,000	x	x	x	x						
1813	5-4-37	Wash.	Wheeler-Osgood Corp	160	1,800,000	x	x							x	"I" not in cont.
1814	5-20-37	"	McGoldrick Lbr.Co.	640	9,600,000	x	x								
1815	5-26-37	"	St.Regis Kraft Co.	620	3,272,000	x	x				x	x		x	
1822	7-1-37	"	M.C.Miller Lbr.Co.	160	2,400,000	x	x				x	x		x	
1826	7-20-37	"	" "	150	2,250,000	x	x				x	x		x	
1828	7-21-37	"	Wilson Bros.Lg.Co.	200	3,000,000	x	x				x	x		x	
1839	12-9-37	"	Brew Mfg.Co.	110	2,912,000	x	x				x	x		x	
1840	12-1-37	"	L.Marenakos,	640	9,600,000	x	x								
1884	5-11-39	"	Everett Pulp & Paper	400	6,000,000	x	x				x	x		x	
1885	5-9-39	"	Ben Cheney Tbr.Co.	640	9,600,000	x	x				x	x		x	
1886	5-22-39	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x				x	x			
1887	5-15-39	"	Joe Walsh & Cascade	320	4,800,000	x									
1890	6-2-39	"	Pac.States Lbr.Co.	320	5,409,000	x	x				x	x		x	
1916	12-14-39	"	M.C.Miller Lbr.Co.	40	600,000	x	x				x	x		x	
* 1919	1-11-40	"	North Bend Tbr.Co.	1,820	22,352,000	x	x				x	x		x	Expired 1946
1924	3-29-40	"	" " "	60	900,000	x	x				x	x		x	
1933	6-15-40	"	M.C.Miller Lbr.Co.	480	7,200,000	x	x				x	x			
1937	7-20-40	"	Kosmos Tbr.Co.	640	10,488,000	x	x				x	x		x	
* 1945	10-3-40	"	Taylor Bros.	480	7,200,000	x	x				x		x	x	"H" not in cont.
1946	10-28-40	"	St Paul & Tacoma	280	4,200,000	x	x				x				
1950	11-19-40	"	Seattle Export Lbr.Co	160	2,400,000	x	x				x	x			
1954	12-19-40	"	Cabin Creek Lbr.Co.	600	9,000,000	x	x				x	x		x	
1955	2-4-41	"	Everett Pulp & Paper	300	765,000	x	x				x	x			
1962	3-17-41	"	Mueller Gregory,Inc.	142	2,130,000	x	x				x	x		x	
1965	3-28-41	"	M.C.Miller Lbr.Co.	160	2,400,000	x	x				x	x		x	

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TIMBER SALES

Sheet 4.

	Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
	T&M 1969	3-24-41	Wash.	Joe Walsh & Cascade Lbr.Co.	320	4,800,000	x									Y.P.logs only
	1970	3-24-41	"	" "	560	8,400,000	x									Y.P.logs only
*	1975	5-20-41	"	Crane Creek Lbr.Co.	80	2,935,000	x	x						x		"H" not in cont. Expired 1945
	1997	10-8-41	"	M.C.Miller Lbr.Co.	35	525,000	x	x				x	x			
	2000	10-23-41	"	Crown Zellerbach Corp.	599	10,176,000	x	x							x	
	2003	11-28-41	"	Joe Walsh & Cascade Lbr.Co.	100	1,500,000	x									Y.P.logs only
	2006	12-1-41	"	West Coast Plywood Co	460	6,900,000	x	x				x	x		x	
	2034	4-21-42	"	Northwest Chair Co.	320	4,800,000	x	x				x	x			"A" not in cont.
	2035	4-13-42	"	Timber Dev.Co.	640	11,679,000	x	x								
*	2037	1-2-42	Idaho	Potlatch Forests,Inc.	26,075	312,531,000	x	x				x				
	2059	6-12-42	Wash.	Lincoln Lbr.Co.	280	475,000	x	x				x	x		x	
*	2067	8-6-42	"	E.K.Bishop Lbr.Co.	120	3,314,000	x	x				x				Inactive 1949
*	2072	8-18-42	"	Long Lake Lbr.Co.	2,378	6,382,000	x	x				x				
	2077	10-3-42	"	Alex Cugini	320	855,000	x	x				x	x		x	
*	2080	9-30-42	"	Lyman Lbr.Co. (Soundview Pulp Co)	2,080	60,959,000	x	x								No routing clause in cont. to L.L.Co.
*	2105	5-5-43	Idaho	Ohio Match Co.	320	1,634,000	x	x				x	x			
	2114	6-29-43	Wash.	D.M.Layman	200	423,000	x	x				x	x		x	
	2122	8-30-43	"	Lindberg & Hobi	300	4,500,000	x	x	x	x			x	x		
	2146	6-6-44	"	" "	2,548	38,220,000	x	x								
*	2162	4-17-44	"	Blosdel-Donovan Lbr.Co.	320	4,800,000	x					x				"A" not in agreement
	2177	9-5-44	"	M.C.Miller Lbr.Co.	640	11,436,661	x	x					x		x	
*	2181	10-9-44	"	Ellensburg Lbr.Co.	320	1,378,000	x	x				x	x			
*	2194	3-19-45	"	Harter Lbr.& Fuel Co.	1,582	23,730,000	x	x				x	x		x	Cancelled 1948
	2217	9-14-45	"	Eclipse Mill Co.	1,119	11,825,000	x	x			x	x	x		x	
*	2240	2-23-46	"	St Paul & Tacoma Lbr.Co.	178	2,670,000	x	x				x				Expired 1948 A & I not in cont.
	2253	5-27-46	"	M.C.Miller Lbr.Co.	360	5,400,000	x	x				x	x			
*	2268	7-2-46	"	" "	640	9,600,000	x	x				x	x		x	
	2273	9-17-46	"	Craig L. Spencer	160	5,345,000	x	x				x	x		x	
*	2298	10-18-46	"	Wall Boom,Inc.	480	7,200,000	x	x				x	x			Inactive 1949
*	2316	2-17-47	"	Northwest Door Co.	800	12,000,000	x	x				x	x			Inactive 1949
	2321	2-27-47	"	St Paul & Tacoma Lbr.Co.	80	1,200,000	x	x				x				
*	2326	4-4-47	"	Keene & Keene	1,200	18,000,000	x	x								Not a timber cont. No routing clause.
	2327	4-8-47	Idaho	Diamond Match Co.	160	2,405,000	x	x				x	x		x	
*	2328	4-8-47	Wash.	M.C.Miller Lbr.Co.	640	9,600,000	x	x				x	x			Cancelled.No tbr cut.
*	2329	4-8-47	"	" "	640	9,600,000	x	x				x	x			
	2355	8-8-47	"	St Paul & Tacoma Lbr.Co.	10	150,000	x	x				x	x			
*	2363	8-22-47	"	D.L.Underwood	55	825,000	x	x				x	x			Inactive 1949
*	2372	8-25-47	"	Olympic Hardwood Co.	80	1,209,000	x	x				x	x			
*	2374	10-20-47	"	Wall Boom,Inc.	33	495,000	x	x				x	x			Inactive 1949
	2388	10-30-47	"	Empire Millwork Co.	637	9,585,000	x	x				x	x		x	
	2392	12-24-47	"	B.John Furn.Corp.	115	3,916,000	x	x								No routing clause

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TIMBER SALES

Sheet 5

	Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
*	T&M 2419	5-28-48	Wash.	Olson Bros.Lbr.Co.	37	555,000	x	x				x	x			Inactive 1949
*	2425	6-18-48	"	Northwest Door Co.	160	2,400,000	x	x				x	x			
*	2434	7-26-48	"	M.C.Miller Lbr.Co.	108	1,620,000	x	x				x	x		x	Inactive 1949
	2436	8-2-48	"	Clarence Avrys	20	300,000	x	x				x	x			
*	2472	4-27-49	"	Cascade Lbr.Co.	13,620	204,300,000	x	x	x	x			x			Not a tbr.sale. Ellensburg Working Circle.
*	2482	6-16-49	"	J.H.Swanberg	260	3,900,000	x	x				x	x		x	
	3190W	1-17-45	Idaho	A.R.Johnson	41,600	624,000,000	x	x					x			
	3363W	9-1-48	"	Idaho Pole Co.	8,520	127,800,000	x	x	x	x		x	x			Cont.never executed.
	832	10-1-45	Mont.	J.Shiffman	1,040	15,600,000	x	x								
*	3230	12-10-45	"	L.D.McFarland	640	9,600,000	x	x					x			
*	3361	7-21-48	"	Wine Glass Ranch	600	1,000,000	x	x				x	x			Cancelled Oct.1949
	(NWI Misc. 1821 (T&M 1333	5-26-27		Donald Plummer	640	9,600,000	x	x								"A" not in cont.
	"B" Clause															
	306	10-10-01	Wash.	Kerry Mill Co.	640	9,600,000		x								Cont.No.should be 396 - No routing clause in 306
	1027	5-6-21	"	Cabin Creek Lbr.Co.	1,120	18,210,000		x								
*	1097	12-15-22	"	J.Neils Lbr.Co.	4,082	18,000,000		x				x				
	1382	4-30-28	"	Frank Inglis	640	9,600,000		x								
	1427	11-30-28	Idaho	Atlas Tie Co.	600	9,000,000		x								
	1665	8-29-33	Wash.	Cedar Craft Prod.Co.	40	600,000		x								
*	1817	6-1-37	"	U.S.Plywood Corp.	640	44,113,000		x				x				Inactive 1949
	1818	6-1-37	"	" "	1,250	44,113,000		x				x				Letter permit for V. Cattavara to cut tbr. No routing clause.
	1841	12-11-37	"	Tbr.Dev.Co.	398	7,713,000		x				x	x		x	
	1918	12-27-39	"	Wilkeson Tbr.Co.	320	4,800,000		x				x	x		x	
	1935	6-27-40	"	Joe Walsh	1,280	19,200,000		x								"B" not in cont.
	1966	4-2-41	"	L.D.McFarland Co.	4,060	60,900,000		x								Letter permit to cut cedar poles.
	1979	6-3-41	"	Soundview Pulp Co.	2,392	35,880,000		x				x	x			No routing agreement
	1996	11-12-41	"	Northwest Chair Co.	600	9,000,000		x				x	x		x	
	2058	6-12-42	"	Lincoln Lbr.Co.	111	18,210,000		x				x	x		x	
*	2088	1-25-43	"	Soundview Pulp Co.	22,335	351,965,000		x				x	x			"F" clause not in cont.
	2095	3-16-43	"	Tacoma-Eastern Lbr.Co.	640	9,600,000		x						x		
*	2132	1-1-44	"	North Bend Tbr.Cop	2,722	65,081,000		x	x	x			x			
	2141	12-22-43	"	Diamond Match Co.	333	1,687,500		x				x	x			
	2163	6-2-44	"	Raymond Lbr.Co.	80	920,000		x						x		
	2196	3-19-45	"	Skate Creek Lg.Co.	240	783,000		x				x	x		x	
*	2211	8-11-45	"	Soundview Pulp Co.	8,368	199,654,000		x				x	x			
*	2218	9-17-45	"	" " "	8,497	136,925,000		x				x	x			
*	2429	6-7-48	"	St Paul & Tacoma Lbr.Co.	160	2,400,000		x				x	x			Inactive 1949

TIMBER SALES

Sheet 6.

	Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
	"C" Clause															
	No T&M No.	10-29-34	Wash.	Eatonville Lbr.Co.	3,400	51,000,000			x	x			x			No "C" clause
	"E" Clause															
	T&M 21	4-18-87	"	Northwestern Lbr.Co.	640	6,000,000					x					
	23	9-1-87	"	" " "	1,280	19,200,000					x					
	1887	5-15-39	"	Joe Walsh & Cascade Lbr.Co.	320	4,800,000					x					
*	2180	10-9-44	"	V.C.Monahan	320	4,800,000					x					Expired 1946
	"F" Clause															
*	2001	10-24-41	"	Seattle Export Lbr.Co.	620	17,603,000						x				Expired 1948. No routing clause in cont. but covered by letters
	2154	4-3-44	"	Crane Creek Lg.Co.	80	2,935,000						x	x	x	x	

Total: 394,135 acres

6,053,822,871 bd.ft.

[fol. 111] EXHIBIT "C" TO RESPONSE (97)

RESPONSE TO REQUEST FOR ADMISSIONS

MINERAL LAND LEASES

	T&M Number	Date of Contract	State	Lessee	Acres	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F
	12	11-3-94	Wash.	Jerimiah O'Connor	160	x					
	20	4-1-96	"	H. Middough	160	x	x	x	x		
	46	1-1-96	"	J.T.Mitchell	100	x	x	x	x		
	201	9-28-97	"	Joseph McCabe	120	x					
	443	1-28-05	"	Bell & Price	40	x		x			
	486	10-10-07	"	Bell & Scott	40	x	x	x	x		
	526	6-11-09	"	Montague J. Bond	320	x	x	x	x		
***	532	12-22-08	Mont.	Three Forks Portland Cement	1,000	x	x				
	734	8-1-14	Idaho	P.F.McGovern & M.J.Burns	160	x		x			
	755	5-29-14	Mont.	Edward Horsky,et al	640	x					
	778	4-15-15	Wash.	Lucien F.McComke,Jr.	640	x	x	x	x		
	795	3-27-16	"	C.M.Sinclair	80	x	x	x	x		
	830	5-12-16	Mont.	Frank C. Bailey	40.	x		x			
	958	6-2-19	Wash.	W.E.Jesseph	350	x		x			
***	1029	3-1-21	Wash.	Wilkeson Sandstone Quarry Co.	160	x	x	x	x		
	1118	4-30-21	Mont.	Edward A. Morley	640	x		x			
	1133	8-1-23	Wash.	The Arquetite Products Co.	80	x	x	x	x		
	1211	12-15-25	Mont.	Thomas Myles	640	x					
	1247	8-1-25	Idaho	Paul Leuschel	120	x		x			
	1304	11-1-26	Wash.	The Kittitas Diatomite Co.	80.	x	x				
	1307	8-24-26	"	Alex Allardyse	5,760	x					
	1350	9-15-27	"	Manufacturers Mineral Co.	250	x	x	x	x		
	1369	9-1-26	"	H.A.Helland & C.A.Dawson	200	x		x			
	1434	8-27-24	Mont.	Phosphate Products Co.	560	x		x			
	1567	1-27-33	Wash.	R.B.Kenyon	640	x	x				
	1706	6-1-27	Mont.	C.Henry Bennett	160	x		x			
	1732	12-24-34	Wash.	Mrs. Shingaburow Sato & S. Ogato	80	x	x	x	x		
	1859	6-30-38	Idaho	Coeur D'Alene Extension Mines,Inc.	410	x	x				
	2100	5-11-43	Wash.	John A.Roos	4,800	x		x		x	
	2109	3-17-41	Mont.	F.B.Reser	160	x					
***	2271	6-18-46	Wash.	Shepard & Lambert	120	x		x		x	
	2278	10-1-46	"	Manufacturers Mineral Co.	320	x					x
	2378	10-7-47	"	Columbia Basin Brick & Tile Co.	80		x		x	x	
	2399	1-30-48	Idaho	Silver Buckle Mining Co.	980	x					
***	2412	3-11-48	Wash.	Manufacturers Mineral Co.	50	x	x	x	x		x
	2421	4-30-34	Mont.	R.Giselius & F.W.McDonald	160	x		x			
***	2431	7-7-49	Wash.	Ernest J.Peterson	1,280	x	x				
***	2473	5-2-49	"	Mt.St.Helens Pumice Corp.	400	x					x
***	2516	11-3-49	"	The Corliss Kaiser Co.	80	x	x	x	x		x

Mineral Land Leases

Sheet 2

T&M Number	Date of Contract	State	Lessee	Acres	Clauses underscored in Request which plaintiff claims are included in the contract. A	B	C	D	E	F
2704	2-20-37	Mont.	Carl H. Peterson	9,996	x		x		x	
2802	4-1-39	"	Anaconda Copper Mining Co.	640	x					
2840	7-1-39	"	S. Standish	1,280	x		x		x	
2860	10-2-39	"	Joseph T. Farrow	40	x		x		x	
2939-A	11-6-41	"	Lewis Clark	640	x		x		x	
2984-A	12-7-42	"	Henry A. Schute	400	x		x		x	
2986	8-3-41	"	O.F.Martin	160	x					
3023	3-9-42	"	Elmer Maddux	160	x					
3030	4-9-42	"	Byron F.Croghan	160	x					
3033	4-16-42	"	Rupert Vorcek	640	x					
3038	5-4-42	"	Ernest Vetter	640	x		x			
3045	7-1-42	"	L.F.Teutsch	700	x		x		x	
3129	10-30-43	"	Mrs.E.Tice Myers	160	x	x				
*** 3129A	11-1-48	"	O.F.Martin	160	x					
*** 3180	10-23-44	"	Martin Mining Co.	160	x					
*** 3184	11-25-44	"	Thomas Myles,Jr.	160	x					
*** 3216A	12-15-45	"	Mike DiLulo	400	x		x		x	
*** 3241	3-10-46	"	Manganese Products,Inc.	240	x					x
3283	9-5-46	"	W.D.Moon	1,070	x		x		x	
*** 3296	1-3-47	"	Arthur S. Fee	160	x					
*** 3302	4-5-47	"	J.A.Denney	160	x					
*** 3328	3-1-48	"	Silica Products Co.,Inc.	1,920	x					x
*** 3384	8-1-49	"	H.L.Poston	200	x					
*** 3399	10-6-49	"	D.A.Grant & A.R.Johnson	160	x					
			TOTAL ACREAGE:	42,466						

[fol. 113] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE SOURCES OF FACT INFORMATION AND RELATED MATTERS—Filed November 22, 1952

The parties to this case stipulate as follows:

1. For the purposes of this case the term "preferential routing agreement" shall be deemed synonymous with the term "traffic clause" and is defined to mean any of the clauses substantially in the form set forth in defendants' answer.

2. Information as to the amount of revenues derived by defendant Northern Pacific Railway Company from the transportation of commodities which are or have been subject to a preferential routing agreement, including information as to the revenue figures requested in plaintiff's interrogatories filed August 10, 1951, is either not available to defendants or cannot be furnished by defendants without excessive expense and without consuming an unwarranted length of time. Revenues resulting from the use of preferential routing agreements accrue only to the defendant Railway Company.

3. Information as to the total number of carloads of commodities which are or have been subject to a preferential routing agreement, transported by defendant Northern Pacific Railway Company, is either not available to defendants or cannot be furnished by defendants without excessive expense and without consuming an unwarranted length of time.

4. Defendant Northern Pacific Railway Company furnished, at plaintiff's request, a list of all competitive sta- [fol. 114] tions on its lines of railroad, totaling 226, and pursuant to agreement with plaintiff, representatives of the Federal Bureau of Investigation selected at random, without any suggestion by the Railway Company or by the

plaintiff as to any names to be selected, from the Railway Company's index of industrial leases at said points the names of three lessees at each station, together with the number, date and term of the lease held by each such lessee. And thereafter the said Railway Company furnished to the Federal Bureau of Investigation, along with other information desired by plaintiff, the number of carloads received and forwarded during the calendar year 1949 by each of said lessees. The parties agree that said figures and said information are admissible as proven facts in this case; provided, however, that the party against whom such figures and such information are used may, upon seasonable notice to the other party, have corrected any errors in such figures or information which such party is able to demonstrate.

5. The figures and facts shown in Moody's *Steam Railroads* and in *The Official Guide of the Railways* are accurate and are admissible as proof of the facts they purport to show; provided, however, that the party against whom such figures are used may, upon seasonable notice to the other party, have corrected any errors in such figures which such party is able to demonstrate.

6. Figures or statements purporting to be statements of fact in reports of the Interstate Commerce Commission to Congress, orders and decisions of the Interstate Commerce Commission and of State bodies charged with the duty of regulating common carriers by rail, motor vehicle, air, or water, decisions of Federal and State courts, and reports made pursuant to law by any common carrier to the Interstate Commerce Commission and State agencies charged with the duty of regulating such common carriers are admissible as proof of the facts they purport to show; provided, however, that the party against whom such figures or facts are used may, upon seasonable notice to the other party, have corrected any errors in such figures or facts which such party is able to demonstrate.

[fol. 115] 7. A substantial part of the shipments of commodities shipped from or to premises which are or have been the subject of a sale, contract to sell, or lease containing a preferential routing agreement are made or have been made in interstate commerce.

8. In the interest of clarification, plaintiff agrees to strike from its request for admissions filed on August 10, 1951, all references to a demand for an admission that the contracts referred to in paragraphs 1, 2, 3 and 6 contained the language purporting to have been copied from such contracts, and the defendants agree to withdraw their denials as to such matter, and in lieu of such request and such denials the parties agree that defendants, by supplemental response to plaintiff's request for admissions, will inform plaintiff as to which of the contracts specified in the appendices to such request contain a clause substantially in the form set forth in defendants' answer, within ten days after the signing of this stipulation.

9. Statistics incorporated in the Fifty-third Annual Report, 1949, of the Northern Pacific Railway Company are admissible as proof of the facts they purport to show; provided, however, that the party against whom such statistics are used may, upon seasonable notice to the other party, have corrected any errors in such statistics which such party is able to demonstrate.

10. It is agreed between the parties that execution of the stipulation entitled "Stipulation re shipments made by purchasers of timber and by lessees of various types, and related matters" shall operate as a withdrawal of the interrogatories filed August 10, 1951, except interrogatory number 3, and plaintiff will not propound any further interrogatories requesting revenue figures for any commodities which are or have been the subject of a preferential routing agreement, except the commodities referred to in said interrogatory number 3.

[fol. 116] Dated at Seattle, Washington, November 21st, 1952.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Counsel for Defendants.

Robert H. Weinstein, John J. Wilson, Elliott H. Feldman, Gerald F. McLaughlin, Counsel for Plaintiff.

[fol. 117] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

ORDER APPROVING STIPULATION—Filed November 22, 1952

This matter having come on to be heard before the undersigned Judge of the above entitled court upon application of the parties for approval of Stipulation Re Sources of Fact Information and Related Matters, dated November 19, 1952, and Stipulation Re Advance Notice as to Documentary Evidence, dated November 19, 1952, and the court having read said stipulations and finding that they are proper and the court having been fully advised in the premises:

Now, Therefore, It Is Hereby Ordered and decreed that the above named stipulations shall be and they hereby are approved, provided that the Court may require the production of any evidence at the trial on the merits notwithstanding any matter or thing to the contrary mentioned in said stipulations.

John C. Bowen, Judge

Presented by:

Harold G. Boggs, Of Counsel for defendants.

Approved as to form:

Robert H. Weinstein, Gerald F. McLaughlin, John J. Wilson, Elliott H. Feldman, Of Counsel for plaintiff.

[fol. 118] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

SUPPLEMENTAL RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS UNDER RULE 36—Filed January 8, 1953

Pursuant to Paragraph 8 of "Stipulation Re Sources of Fact, Information and Related Matters" defendants make this Supplemental Response to Plaintiff's Request for Admissions under Rule 36:

I.

With respect to Request I—Timber Land Sales:

All of the contracts listed on Exhibit A of the original response contain a preferential routing agreement in substantially the form set forth on page 10 of the answer to the complaint herein, except the following contracts, each of which contains a preferential routing agreement in the form designated by the number hereinbelow, each of such forms being copied in the appendix attached hereto and made a part hereof, commencing at page 1 and ending at page 36 of said appendix:

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
FORM 6:					
9758	8-28-23	Wash.	White River Lbr. Co.	8,676	130,140,000
FORM 9					
10168	7- 1-36	"	T. A. Peterman	2,216	33,240,000
10260	2-27-39	"	"	1,198	31,140,000
10319	8-28-40	"	" (Cont. not executed)	480	7,200,000
10346	5-29-41	"	"	4,904	73,560,000
10464	8-30-43	"	"	28,333	21,600,000
[fol. 119] FORM 10					
9645	12-15-22	"	J. Neils Lbr. Co.	4,148	62,220,000
FORM 14					
10463	9-30-43	"	Lindberg & Hobi	840	12,600,000
10486	6- 6-44	"	W. H. Lindberg	2,547	38,105,000

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
FORM 19					
10579	3-29-45	Wash.	St. Paul & Tacoma Lbr. Co.	1,281	19,215,000
FORM 21					
10281	10- 2-39	"	Cascade Tbr. Co.	2,236	100,000,000
FORM 22					
10067	7- 1-33	"	McGoldrick Lbr. Co.	8,538	48,850,000
FORM 23					
10154	2-29-36	"	Albert Miller	298	4,470,000
FORM 24					
2089	5- 8-45	Idaho	Pack River Lbr. Co.	34,828	75,000,000
FORM 29					
N-281	6- 5-30	Wash.	Klement & Kennedy	643	9,045,000
FORM 35					
	1- 3'00	"	Weyerhaeuser Tbr. Co.	900,000	14,981,000,000
FORM 36					
2472	7- 1-97	Mont.	Big Blackfoot Milling Co.	41,152	167,241,000
2732	6-14-98	"	" "	10,124	41,143,000
FORM 37					
3881	8-31-01	"	" "	150,432	611,355,000
4023	3-31-02	"	" "	184,375	571,164,000
4535	6-30-03	"	" "	620,747	2,700,000,000
4734	6-30-04	"	" "	1,600	9,440,000
4932	9- 7-07	"	" "	11,927	53,017,500
5861	10-30-09	"	" "	5,689	17,797,000
FORM 38					
10753	9-13-48	Wash.	St. Paul & Tacoma Lbr. Co.	295	228,000

[fol. 120] and except the following contracts which contain no preferential routing agreement:

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
10468	10-25-43	Wash.	Clarence P. Wise	Not a timber land sale	
N-343	4-27-34	"	St. Paul & Tacoma Lbr. Co.	40	1,004,000

II.

With respect to Request II—Timber Sales:

All of the contracts listed on Exhibit B to the original response contain a preferential routing agreement in substantially the form set forth on page 10 of the answer to the complaint herein, except the following contracts, each of which contains a preferential routing agreement in the form designated by the number hereinbelow, each such form being copied in the appendix attached hereto, commencing at page 1 and ending at page 36 thereof:

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
FORM 6					
609	12- 4-11	Wash.	Manley-Moore Lbr. Co.	1,920	28,800,000
638	9-14-12	"	" "	1,920	28,800,000
648	12-21-12	"	Ellensburg Lbr. Co.	320	4,800,000
690	12-29-13	"	Cascade Tbr. Co. (Should be Cascade Lbr. Co.)	1,120	16,800,000
693	12- 1-13	"	Manley-Moore Logging Co.	1,920	28,800,000
FORM 9					
1710	6- 6-34	"	T. A. Peterman	645	1,300,000
1715	6- 8-34	"	Fairfax Lbr. Co.	3,690	55,350,000
(1715	10-29-34	"	Assigned to Eatonville Lbr. Co.	3,400	51,000,000)
FORM 10					
1097	12-15-22	"	J. Neils Lbr. Co.	4,082	18,000,000
[fol. 121] **FORM 11**					
3363	9- 1-48	Idaho	Idaho Pole Co. (contract never executed)	8,520	127,800,000
FORM 13					
2088	1-25-43	Wash.	Soundview Pulp Co.	22,335	351,965,000
2211	8-11-45	"	" "	8,368	199,654,000
2218	9-17-45	"	" "	8,497	136,923,000
FORM 14					
2122	8-30-43	"	Lindberg & Hobi	300	4,500,000
2146	6- 6-44	"	" "	2,548	38,220,000
FORM 15					
2472	4-27-49	"	Cascade Lbr. Co.	13,620	204,300,000
FORM 16					
1887	5-15-39	"	Joe Walsh & Cascade Lbr. Co. (duplicated on sheets 3 & 6)	320	4,800,000

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
1969	3-24-41	Wash.	Joe Walsh & Cascade Lbr. Co.	320	4,800,000
1970	3-24-41	"	" "	560	8,400,000
2003	11-28-41	"	" "	100	1,500,000
FORM 25					
585	6-12-11	"	August VonBanklin	640	9,600,000
FORM 28					
1817	6- 1-37	"	U. S. Plywood Corp.	640	44,113,000
FORM 30					
1343	6-22-27	"	Wm. Pierce	160	2,400,000
FORM 31					
1026	4-28-21	"	W. G. McAvoy	80	1,346,300
FORM 32					
753	3-16-15	"	Isaac Garrison	640	9,600,000
FORM 33					
3	2-19-95	"	E. A. Stroup	160	9,800,000
FORM 34					
1676	12-20-33	"	Kelso Veneer Co.	1,120	16,800,000
FORM 39					
17	7-18-87	"	White River Shingle Co.	320	6,800,000

[fol. 122] and except the following contracts which contain no preferential routing agreement:

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
1321	3-10-27	Wash.	Pacific States Lbr. Co.	6,607	9,105,000
1728	11- 5-34	"	Cascade Lbr. Co.	302	2,987,000
2080	9-30-42	"	Lyman Lbr. Co.	2,080	60,759,000
2326	4- 4-47	"	Keene & Keene (Not a timber contract)	11,200	18,000,000
2392	12-24-47	"	B. John Furn. Corp.	115	3,916,000
1818	6- 1-37	"	U. S. Plywood Corp.	1,250	44,113,000
1979	6- 3-41	"	Soundview Pulp Co.	2,392	35,880,000
2095	3-16-43	"	Tacoma Eastern Lbr. Co.	640	9,600,000
21	4-18-87	"	Northwestern Lbr. Co.	640	6,000,000
23	9- 1-87	"	" "	1,280	19,200,000
2180	10- 9-44	"	V. C. Monahan	320	4,800,000

There is a duplication in Request II in that T. & M. 1715, dated June 8, 1934, timber sale to Fairfax Lumber Company, listed on sheet 3 of Appendix B of the response, was assigned to Eatonville Lumber Company on October 29, 1934, and the contract is repeated on sheet 6 to the extent of 3400 acres and 51,000,000 board feet—original contract involved 3,690 acres and 55,350,000 board feet.

III.

With respect to Request III—Mineral Land Leases:

No form of preferential routing agreement is set-up in the answer to the complaint herein, but the leases listed on Exhibit C to the original response contain a preferential routing agreement in the form designated by letter opposite the description of the lease in the following list, each such form being copied in the appendix attached hereto, commencing at page 37 and ending at page 43 thereof.

[fol. 123]

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
WASH.				
12	11- 3-1894	Jeremiah O'Connor	160	"Q"
20	4- 1-1896	H. Middaugh	160	"H"
46	5- 4-1884	J. T. Mitchell	100	"I"
201	9-28-1897	Joseph McCabe	120	"R"
443	1-28-1905	Bell and Price	40	"M"
486	10-10-1897	Bell and Scott	40	"S"
526	6-11-1909	Montague J. Bond	320	"J"
778	4-15-1915	Lucien F. McConike, Jr.	640	"E"
795	3-27-1916	O. M. Sinclair	80	"E"
1029	3- 1-1921	Wilkeson Sandstone Quarry Co.	160	"M"
1307	6-17- 27	Alex Allardyce	(Oil & Gas permit)	
1133	8- 1-1923	The Arquetite Products Co.	80	"E"
1304	11- 1-1926	The Kittitas Diatomite Co.	80	"F"
1350	9-15-1927	The Manufacturers Mineral Co.	250	"E"
1369	9- 1-1926	H. A. Holland and C. A. Dawson	200	"A"
1567	1-27-1933	R. B. Kenyon	640	"E"

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
WASH. (Cont'd)				
1732	12-24-1934	Mrs. Shinzaburrow Sato & S. Ogato	80	"G"
2378	10- 7- 47	Columbia Basin Brick & Tile Co.	80	"T"
2271	6-18-1946	Homer E. Shepard & Robt. Lambert	120	"C"
2278	10- 1-1946	Manufacturers Mineral Co.	320	"D"
2412	3-11-1948	Manufacturers Mineral Co.	50	"N"
2431	7-12-1949	Ernest J. Peterson	1280	"O"
2473	4-28-1949	Mt. St. Helens Pumice Co.	400	"D"
2516	11- 3-1949	The Corliss-Kaiser Co.	80	"P"
IDAHO				
734	8- 1-1914	P. F. McGovern & Martin J. Burns	160	"A"
1247	8- 1-1925	Paul Leuschel	120	"L"
1859	6-30-1938	Coeur d'Alene Extension Mines, Inc.	410	"E"
2100	2-11-1943	John A. Roos	4800	"C"
2399	1-30-1948	Silver Buckle Mining Co.	980	"D"
MONT.				
532	12-22-1908	Three Forks Portland Cement	1000	"K"
755	5-29-1914	Edward Horsky, et al.	640	"A"
830	5-12-1916	Frank C. Bailey	40	"L"
958	6- 2-1919	H. E. Joseph	350	"L"
1118	4-30-1921	Edward A. Morley	640	"A"
1211	12-15-1925	Thomas Myles	640	"A"
1434	8-27-1924	Phosphate Products Co.	560	"A"
1706	6- 1-1927	G. Henry Bennett	160	"B"
2109	3-17-1941	H. B. Reser	160	"D"
2421	4-30-1934	R. Giselius & F. W. McDonald	160	"B"
2704	2-20-1937	Carl H. Peterson	9996	"C"
2802	4- 1-1939	Anaconda Copper Mining Co.	640	"D"
2840	7- 1-1939	S. Standish	1280	"C"
2860	10- 2-1939	Joseph T. Farrow	40	"C"
2939-A	11- 6-1941	Lewis Clark	640	"C"
2984-A	12- 7-1942	Henry A. Schute	400	"C"

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
MONT. (Cont'd)				
[fol. 124]				
2986	8- 3-1941	O. F. Martin	160	"D"
3023	3- 9-1942	Elmer Maddux	160	"D"
3030	4- 9-1942	Byron F. Croghan	160	"D"
3033	4-16-1942	Rupert Voreck	640	"D"
3038	5- 4-1942	Ernest Vetter	640	"C"
3045	7- 1-1942	L. F. Teutsch	700	"C"
3129	10-30-1943	Mrs. E. Tice Myers	160	"D"
3129-A	11- 1-1948	O. F. Martin	160	"D"
3180	10-23-1944	Martin Mining Co.	160	"D"
3184	11-25-1944	Thomas Myles, Jr.	160	"D"
3216-A	12-15-1945	Mike DiLulo	400	"C"
3241	3-10-1946	Manganese Products, Inc.	240	"D"
3283	9- 5-1946	W. D. Moon	1070	"C"
3296	1- 3-1947	Arthur S. Fee	160	"D"
3302	4- 5-1947	J. A. Denney	160	"D"
3328	3- 1-1948	Silica Products Co., Inc.	1920	"D"
3384	8- 1-1949	H. L. Poston	200	"D"
3399	10- 6-1949	Dan J. Grant & A. R. Johnson	160	"D"

IV.

With respect to Request VI—Coal Land Leases & Permits:

The various coal leases and permits listed in Appendix VI to the request contain a preferential routing agreement in the form designated by letter opposite the description of the lease in the following list, each such form being copied in the appendix attached hereto, commencing at page 44 and ending at page 45 thereof. (Form "D" is the form of preferential routing agreement set forth on page 9 of the answer:)

Northern Pacific Leases:

T & M No.	Date of Lease	Lessee	Routing Clause Form
MONTANA			
492	1- 1-1907	Montana Coal & Coke Co.	"B"
545	11-27-1909	Western Coal & Coke Co.	"B"
563	7- 1-1910	Julius Berg (Six Mile Coal Co.)	"A"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
	MONTANA (Cont'd)		
623	12- 1-1911	Ed. Horsky	"A"
673	6- 1-1913	Lee Rouse	"B"
714	2- 2-1914	Frank O'Meara	"A"
715	2- 2-1914	Washington Montana Coal Co.	"A"
757	6- 9-1914	Eureka Development Co.	"A"
765	11-15-1914	T. Nash, et al	"A"
743	4-17-1914	Roundup Coal Co. (no traffic clause)	
790	8-23-1915	Roundup Coal Co.	"A"
628	6- 1-1912	Oscar Nelson	"A"
[fol. 125]			
809	12-27-1915	Charles Augur	"H"
811	12- 1-1915	Iver Johnson	"G"
817	4- 7-1916	Ed. O'Donnell	"G"
1045	6- 1-1920	Bair Collins Co.	"A"
1079	12-28-1920	John C. Crocker	"A"
1271	9- 1-1923	Jeffries Coal Mining Co.	"A"
1442	11- 1-1923	C. D. Ray	"A"
1643	7- 1-1926	Northwestern Mining & Fuel Co.	"A"
1735	12- 1-1927	Bair Collins Co.	"A"
1819	9- 1-1928	Roundup Coal Mining Co.	"A"
2019	3- 1-1930	Superior Coal Co.	"A"
2957	3- 5-1941	R. D. Chamberlain	"C"
3102	5- 5-1943	Jeffries Coal Co.	"D"
3268	6-23-1926	Fred & Gus. Nies	"D"
699	12- 1-1913	John A. Murphy	"A"
717	1-26-1912	E. M. Barnett	"A"
770	12-29-1914	George A. Kers	"G"
889	9-20-1917	Edward H. Kinsey	"A"
901	2- 1-1918	A. A. Morris	"A"
943	12-19-1918	Wyoming Montana Coal Co.	"A"
989	9- 1-1919	Frank J. Stifel	"A"
1283	8- 1-1923	Charles B. Foncanon	"A"
	NORTH DAKOTA		
5958	9- 1-1916	John F. Brodie	"A"
5988	4- 1-1923	Lehigh Mining Co.	"A"
5993	8- 1-1927	Lehigh Briquetting Co.	"B"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON			
2	10-17-1891	Wash. Mining & Dev. Co.	"A"
2	7- 1-1889	Washington Improvement Co.	"A"
2	1- 1-1889	John Kangley	"A"
2	6- 1-1893	Wilkeson Coal & Coke Co.	"A"
4	7- 1-1889	So. Prairie Coal Co.	"A"
6	6-20-1884	Tacoma Coal Co.	none
8	11-20-1891	Alton Coal Co.	"A"
9	7-20-1893	Green River Coal & Coke Co.	"A"
11	10- 2-1894	Eureka Coal Co.	"A"
63	1-26-1897	Eureka Coal Co.	"A"
385	1- 1-1901	Issaquah Coal Co. (NWI)	"A"
388	4- 1-1901	Cannel Coal Co.	"A"
465	3-12-1907	Pacific Coal & Oil	"A"
477	5- 1-1907	Fremont Coal Co. (NWI)	"A"
484	7- 5-1907	Independent Coal Co.	"A"
487	8- 1-1907	Coast Coal Co.	"A"
490	5-16-1907	North Coast Colliery Co.	"A"
508	9-11-1908	Sam Hyde	"A"
514	10-16-1908	Commonwealth Coal Co.	"A"
519	3- 6-1909	H. Thompson	"A"
521	3-30-1909	Geo. Bayne	"A"
525	5-20-1909	Sam Hyde	"A"
546	1- 3-1910	Fred Stevens	"A"
551	8- 8-1910	J. H. Rose	"A"
538	2- 2-1910	Central Coal Co. (NWI)	"A"
557	11- 2-1910	Tanum Coal Co.	"A"
515	10-16-1908	Black Carbon Coal Co.	"A"
[fol. 126]			
576	5-29-1911	U. S. Coal Co. (NWI-NP)	"A"
578	3-21-1911	J. S. McMiniemee	"A"
588	4-27-1911	W. Oakes (NWI)	"A"
602	6- 6-1911	Busy Bee Mining Co.	"A"
636	7- 1-1912	American Coal Co.	"A"
642	9- 1-1911	Deep Lake Coal Co. (NWI)	"A"
658	3-26-1913	James Anderson	None
674	8-20-1913	H. S. Matthews	"A"
686	12- 8-1913	Sam Hyde	"A"
738	9-29-1914	Pocahontas Coal & Coke Co.	"B"
746	1- 1-1915	National Coal Company	"C"
782	11-25-1915	Ind. Coal & Coke Co. (NWI)	"A"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON (Cont'd)			
805	7-22-1916	Joseph Swalwell	None
819	8-30-1916	Carbon Hill Coal Co.	"B"
874	11- 1-1917	J. E. Jones (NWI)	None
884	11- 1-1917	Wash. Colliery Co. (NWI)	"B"
902	5- 1-1918	Pacific *Coal* Coal Co.	"C"
909	5- 1-1918	Roslyn Fuel Co.	"C"
914	6-10-1918	Geo. Rankin	"B"
915	6-17-1918	Pacific Coast Coal Co.	"A"
919	9-18-1917	C. J. Smith	None
926	7-19-1918	C. J. Smith (NWI)	"B"
932	10-22-1918	T. M. Tannett	"B"
951	1919	Mashell Coal & Coke (NWI)	"A"
1002	8- 1-1920	C. J. Smith	"B"
1008	12-22- 20	Andrew Reynolds (NWI)	None
1023	1- 1-1921	T. W. Siddle	"A"
1025	1- 1- 21	Carbon Coal & Clay (NWI)	"C"
1042	1-27-1922	Dale Coal Co.	None
1053	1- 1-1921	Salton River Bituminous Coal Co.	"A"
1115	3-29-1923	John Richmond	None
1121	6- 1-1923	Am. Smelting & Refining (NWI)	None
1136	9- 1-1923	J. G. Parkin (NWI)	"A"
1165	4- 1-1924	C. B. Niblock (NWI)	"C"
1174	6-12-1924	Evan Jones	None
1222	4-23-1925	S. Mitsumasu	None
1260	9- 1-1925	Abe Morris (NWI)	"C"
1372	1-27-1928	Andrew Reynolds	"C"
1395	4- 1-1928	Dale Coal Co.	"C"
1400	7- 1-1928	Evan Collierie	"C"
1450	5-21-1929	James Bolde	"A"
1479	1- 1-1930	E. R. Peoples	"A"
1481	2- 1-1930	John Buesch	None
1505	7- 1-1930	J. O. West	"C"
1535	11- 3-1931	Morris Bros. Coal Mining Co.	"D"
1560	9- 7-1932	W. Kegler	"A"
1661	1- 1-1933	Geo. Savage	"C"
1697	3- 5-1934	Roslyn Cascade Coal Co.	"B"
1782-1	5- 1-1936	Dale Coal Co.	"C"
1790	9-15-1936	Thomas Bevan	None

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON (Cont'd)			
1856	6- 4-1938	Palmer Coking Coal Co.	"C"
1991	9- -1941	Jonesville Coal Co.	"C"
2090	1- 1-1943	L. E. Thomas	"C"
[fol. 127]			
2216	10- 1-1945	Palmer Coking Coal Co.	"C"
2232	1-18-1946	J. B. Miller	"C"
2234	9-27-1945	Anderson Coal Mine	"C"
2309	1- 1-1947	G. C. Olson	"C"
2391	12-29-1947	John Lanigan	None
		Northwestern Improvement Company Leases:	
225	8-31-1907	Fleet Coal Co.	"A"
1920	1- 1-1940	Hyde Coal Co.	"C"
2085	12- 1-1942	Issaquah Coal Co.	"C"
2221	3- 1-1945	M. B. Cavanaugh	"C"

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Duly sworn to by Harold G. Boggs (Jurat omitted in printing).

[fol. 129]

APPENDIX TO SUPPLEMENTAL RESPONSE

TIMBER AND TIMBER LAND SALES FORMS

Form 6

The purchaser agrees that it, its successors and assigns, will offer to the Northern Pacific Railway Company for transportation over its lines and will allow said Railway Company to transport all timber, lumber and lumber products manufactured from the timber cut from the lands herein described and from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway Company shall transport such timber, lumber and lumber products at as low rates as any competing railroad lines.

Form 9

As a part of the consideration for this contract, the purchaser agrees that all the products of his mills and factories shipped by rail to points reached by the vendor or its connecting lines, shall be offered to the Northern Pacific Railway Company for shipment, provided rates are equal to those of any other competing railway lines. Provided, however, that if the purchaser should purchase timber from other owners with an obligation to route the product thereof over another line, the purchaser shall not be required to ship via Northern Pacific Railway the product of the timber purchased with such obligation.

Form 10

Rates being equal, the purchaser agrees to offer to the Northern Pacific Railway Company, for transportation over its lines, all products manufactured from the timber cut and removed from lands herein described, or the equivalent, destined for points on the Northern Pacific Railway or its connecting lines, and rates being equal, will give the North-
[fol. 130] ern Pacific Railway Company the preference in the transportation over its lines of all freight from its manufacturing plants at Klickitat and Glenwood destined

for points on the Northern Pacific Railway or its connecting lines.

Form 11

The Operator agrees as one of the material considerations of this contract that, rates and service being equal, it will ship via Northern Pacific Railway all logs, poles, lumber and other forest products manufactured from the timber cut from the premises under this contract or from other timber which it may own or control standing or being in the drainages of Squaw or Swan or Moose Creeks, or an equivalent tonnage or quantity of poles, lumber and other forest products manufactured from timber cut from lands not purchased from the Railway Company located in other drainages. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured into such products. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, shipments thereof shall be routed to favor said Railway with the longest haul, if the expense to the Operator is not increased over the cost of shipment over another rail line. In the event the Operator shall sell or dispose of any logs, poles, lumber and other forest products manufactured from timber cut from the aforesaid drainages prior to the time the same are shipped, the Operator shall provide as a condition of such sale or disposal that the purchaser will comply with all of the provisions of this paragraph relative to the rail shipment.

The Operator shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying performance under this provision.

[fol. 131] Form 13

Agreement made this first day of October, A. D. 1942, between the Soundview Pulp Company, a Washington corporation, of Everett, Washington, party of the first part, and the Northern Pacific Railway Company, a Wisconsin corporation, party of the second part, Witnesseth:

Whereas, the first party has heretofore purchased from the second party certain timber and timbered lands and expects to purchase additional timber and timbered lands

from the second party, a part consideration for which being the obligation of the first party to offer for transportation over the lines of the Northern Pacific Railway the manufactured products from said timber;

Now, Therefore, in consideration of one dollar ($1), and as part of the consideration for the timber and timbered lands the first party has heretofore acquired, or may hereafter purchase, from the second party, and for a valuable consideration moving from each party to the other, it is hereby mutually agreed as follows:

1. Obligation Prior to Logging

The first party agrees that rates being equal, until the commencement of the logging of timber and timbered lands which have been or may hereafter be purchased from the second party, it will ship over the lines of the Northern Pacific Railway, so as to give it the longest possible haul, one-third (⅓) of all its rail output from its plant or plants.

2. Obligation After Logging Is Commenced as to Pulp Species

From the date logging of the timber referred to in Paragraph 1 hereof is commenced, and as the logs are processed, rates being equal, the first party will ship over the lines of the Northern Pacific Railway, so as to give it the longest possible haul, one (1) ton of pulp for each eleven hundred (1100) feet, board measure, of the pulp species of said timber, or its equivalent in other manufactured products, [fol. 132] but in no event less than one-third (⅓) of all the rail output from its plant or plants. The first party will also ship over the lines of the Northern Pacific Railway, rates being equal, all logs from said timber from points of origin to points of processing, or to tidewater booming grounds.

3. Obligation as to Timber Acquired by Exchanges

The first party may elect to exchange portions of the timber or lands purchased from the second party with the State or the United States Government or other owners. It is agreed that the provisions of Paragraph 2 hereof shall apply to the timber received in such exchanges.

4. Obligation as to Timber Purchased From Others

It is agreed that the provisions of Paragraph 2 hereof shall apply to the timber removed by or for the first party which the first party may own or acquire in the same watershed as the timber which it has or which it may hereafter acquire from the second party, or which is adjacent to timber which is so acquired from the second party, or timber which may be removed in connection with logging the timber acquired from the second party.

5. Sale of Timber to Others

It is agreed that the first party may sell to others timber from lands or timber purchased from the second party or obtained by exchanges thereof, but the first party shall obtain an agreement from the purchaser or purchasers that the logs, and the manufactured products therefrom, (if manufactured into pulp, each 1100 feet, board measure, shall be deemed 1 ton), or the equivalent thereof, will move over the lines of the Northern Pacific Railway, rates being equal, so as to give it the longest possible haul. As [fol. 133] to the timber other than the pulp species, referred to in Paragraph 4 hereof, if sold to others, the first party agrees to use its best efforts to have the purchaser or purchasers ship such logs, and the products thereof, over the lines of the Northern Pacific Railway, rates being equal, so as to give it the longest possible haul.

6. First party will furnish to second party quarterly an itemized statement in detail, showing compliance with the provisions of this contract.

7. Each provision hereof shall be binding upon, and every benefit hereof shall inure to, the respective successors, assigns and subsidiaries of the parties.

Soundview Pulp Company, By .....

Witness: .....

Northern Pacific Railway Company, By .....

Attest: .....

[fol. 134] Form 14

Contract made this 16th day of April, 1940, between Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter called "Railway Company," and The Lindberg & Hobi Company, a Washington corporation, hereinafter called "Timber Company."

Whereas, the Railway Company has conveyed to the Timber Company certain lands situated in the Counties of Lewis and Thurston, State of Washington, which lands are listed and described on Schedule A hereto attached; and

Whereas, as one of the material considerations of such conveyance, it was understood that the Railway Company should receive for transportation over its lines all shipments of lumber and other products manufactured from the timber cut from the lands conveyed, destined to points on the railroad of the Railway Company or its connecting lines; and

Whereas, it is intended that if, for any reason, the Timber Company is unable to offer all of such shipments of lumber or other products manufactured from the timber upon the premises conveyed, for transportation over the lines of the Railway Company, it will, so far as possible, arrange for the transportation of an equivalent amount of shipments of lumber and other products manufactured from timber upon other lands owned and controlled by the Timber Company in the Little Nisqually area;

Now, Therefore, in order to carry out such understanding, and in consideration of such conveyance to it, of the lands described in Schedule A, the Timber Company agrees for itself, its successors and assigns, as follows:

(1) The Timber Company agrees that, rates being equal, it will, so far as it may be able to do so, ship via Northern Pacific Railway all lumber and other products manufactured by it from timber cut from the lands described in Schedule A and from lands owned or controlled by it in the Little Nisqually area; that it will offer to sell the logs and poles produced by it from said lands, at prices, terms and condi-

tions suitable to it, to the Wheeler Osgood Sales Corporation of Tacoma, Washington, or to such other lumber manu-
[fol. 135] facturing company or companies as will agree in writing to ship via the Northern Pacific Railway, rates being equal, and to the extent that such purchaser shall be able to control the routing, the lumber and other products manufactured from said logs and poles, destined to points on the railroad of the Railway Company or its connecting lines. Such shipments by the Timber Company and by the purchasers to whom it may make sales of logs and poles, shall be made from time to time in the ordinary course of business, as the timber is manufactured. Where the point of destination of the lumber or other manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.

(2) The Timber Company shall permit the Railway Company, at any convenient time or place, to examine the Timber Company's records of sales of logs made by it, and the shipments of lumber or other products manufactured by it from the timber cut from the lands covered by this agreement.

(3) In the event the Timber Company sells any portion of Sections 15, 17, 19, 21, 23, 25, 27, 29 and 31, Township 14 North, Range 4 East, and Sections 5, 7, 9, 11 and 15, Township 13 North, Range 4 East, described in Schedule A, or standing mature timber on any of said lands, it will provide as a condition of any such sale that the purchaser of such land or timber, and his successors or assigns, will ship via the Northern Pacific Railway, rates being equal, the lumber or other products manufactured from the timber cut from said lands, destined to points on the railroad of the Railway Company or its connecting lines.

In Witness Whereof the parties have caused this contract to be signed, in duplicate, this 16th day of April, 1940.

Northern Pacific Railway Company, By .....

The Lindberg & Hobi Company, By .....

[fol. 136] Form 15

As one of the material considerations of this contract, without which it would not be made, the second party agrees that it will offer to the Northern Pacific Railway Company for transportation over its lines all shipments of logs and other unmanufactured forest products, consigned by rail to the mills owned or controlled, or that may be acquired, during the life of this contract, by the second party, provided rates are equal to those of competing rail lines.

The second party will also offer to the Northern Pacific Railway Company for transportation over its lines all of the manufactured products of the mills now owned or controlled, or that may be acquired, during the life of this contract, by the second party, whose operations are supplied in whole or in part by timber from the ownership of the first parties, which is shipped by rail destined to points reached by said railway or its connecting lines, provided rates are equal to those of competing rail lines. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to give said railway the longest haul, if the expense to the second party is not increased over the cost of shipment over another rail line.

Form 16

The second party agrees to cut and remove said yellow pine timber within one (1) year from the date hereof, and to ship the logs by Northern Pacific Railway from Cle Elum, Washington, consigned to the third party at Yakima, Washington.

[fol. 137] Form 19

Agreement

Contract made this 17th day of May, A.D. 1945, between the St. Paul & Tacoma Lumber Company, of Tacoma, Washington, first party, herein called the Lumber Company, and the Northern Pacific Railway Company, second party, herein called the Railway Company, Witnesseth:

Whereas, the Railway Company has this date, by Deed No. 25014-W, sold and conveyed to the Lumber Company the following described lands in Pierce County, Washington, to-wit:

All of Section seventeen (17) and all fractional Section nineteen (19) in Township fifteen (15) North, Range seven (7) East of the Willamette Meridian; and

Whereas, one of the material considerations for said land is the agreement by the Lumber Company to ship via the Northern Pacific Railway all logs, poles and all products manufactured from the timber on said land;

Therefore, in consideration of the conveyance of said land to the Lumber Company and as one of the material considerations without which it would not have been made, the Lumber Company agrees for itself, its successors and assigns, as follows:

1. That it will ship, or cause to be shipped, via the Northern Pacific Railway all logs, poles and all products manufactured from the timber on said described land which is the subject of this agreement, or an equivalent of such products from other timber, which equivalent, however, shall not be satisfied out of the shipping commitments under other contracts with the Railway Company or the Northwestern Improvement Company; provided, this provision as to logs and poles shall only apply if there is transportation thereof as herein contemplated and the total cost of movement thereof by rail, including that part of the cost of the building of railroad by the Lumber Company which is fairly assignable to the transportation of logs and poles which are the subject of this agreement, does not exceed 50¢ per thousand board feet measure, the total cost of [fol. 138] other means of transportation. All shipments of such products or the equivalent shall be made at or within a reasonable time after the timber which is the subject of this agreement is manufactured. Where the point of destination is not on the line of the Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

2. The Lumber Company shall make monthly reports to the Western Land Agent of the Railway Company at Seattle, Washington, in a form furnished herewith, showing timber removed, if any, and sales, if any, of logs and poles cut from timber which is the subject of this agreement, and the Lumber Company shall permit the Railway Company to examine the Lumber Company's records at any convenient time and place for the purpose of verifying such reports or relative to the performance of this contract.

3. For the purpose of accounting under this contract, it is agreed (1) that the total shipments to be made hereunder shall not exceed the board foot measure as shown by the camp or woods scale of said timber; (2) for the purpose of equivalents, one ton of pulp shall equal 1100 feet log measure; for plywood, the standard conversion measure shall be used, namely, 2500 square feet of 3/8 inch plywood shall equal 1000 board feet of log measure; for shingles, 12 squares shall equal 1000 board feet of log measure; and 1400 feet of cedar siding shall equal 1000 board feet of log measure.

4. In the event the Lumber Company shall sell any logs or poles cut from the timber which is the subject of this agreement, the Lumber Company shall secure from its vendee a written undertaking to perform all the obligations and to be bound by all the provisions of this section with respect to shipment of all logs or poles sold to such vendee and all products manufactured therefrom. Such undertaking in the case of sale of logs to a party who will manufacture the same without further transportation of such [fol. 139] logs shall be in the form of agreement marked "Exhibit A" attached hereto and made a part hereof. Upon receipt by the Railway Company of a fully executed copy of such undertaking, the Lumber Company shall be credited on its obligations under this section to the extent of the quantity of logs and poles so sold to such vendee. It is specifically understood and agreed, however, that if the Railway Company shall notify the Lumber Company in writing that any such vendee of the Lumber Company is in default of compliance with the terms of such undertaking, the Lumber Company shall forthwith discontinue

making any further sales to such vendee of logs or poles cut from timber which is the subject of this agreement until such time as the Railway Company shall notify the Lumber Company in writing that sales to such vendee may be resumed.

In Witness Whereof, the parties have caused this contract to be signed in duplicate the day and year first above written.

St. Paul & Tacoma Lumber Company, By: E. G. Griggs II, President.

Attest: P. L. Whitaker.

Northern Pacific Railway Company, By: B. W. Scandrett, Vice President.

Attest: Hugh McLeod, Assistant Secretary.

[fol. 140] Exhibit A

Transportation Undertaking

Agreement made this ..... day of ....., by and between ....., hereinafter called ....., and St. Paul & Tacoma Lumber Company, hereinafter called "Lumber Company."

I

Pursuant to the terms of agreement dated ..... for the sale by the Lumber Company to .... of ..... board feet log measure of logs and poles and as a material part of the consideration for said sale, ... agrees:

(1) To ship or cause to be shipped via the railroad of the Northern Pacific Railway Company all products manufactured rom said logs and poles and to make all shipments of such products at or within a reasonable time after said logs and poles are manufactured. Where the point of destination is not on the line of the Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

(2) To make monthly reports to the Western Land Agent of said Railway Company at Seattle, Washington, in such form as he may from time to time prescribe, giving such information as in his judgment is necessary to enforce this agreement, and to permit the Railway Company to examine ..... records at any convenient time and place for the purpose of verifying such reports, or relative to the performance of this contract.

II

It is mutually agreed that for the purpose of accounting under this contract (1) that the total shipments to be made hereunder shall not exceed ..... board feet log measure of logs and timber; (2) for the purpose of equivalents one ton of pulp shall equal 1100 feet log measure; for plywood the standard conversion measure shall be used, namely: 2500 square feet of 3/8 inch plywood shall equal 1000 board feet of log measure; for shingles 12 squares shall equal 1000 board feet of log measure; for cedar siding 1400 feet shall equal 1000 board feet of log measure.

In Witness Whereof, the parties hereto have executed this agreement as of the date and year first above written.

By .....

St. Paul & Tacoma Lumber Company,

By .....

[fol. 141] Form 21

The purchaser agrees as one of the material considerations of this contract that rates being equal it will ship via the Northern Pacific Railway Company all logs, poles, timber and other products manufactured by it from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured by it from timber cut from lands not acquired from the vendor. Such shipments shall be made from time to time, in the ordinary course of business, as the timber is manufactured. Where the destination of the manufactured product is not on the line of the Northern Pacific Railway Company, such ship-

ments shall be routed to favor said Railway Company with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the vendor of shipments under this provision, and shall permit the vendor to examine the purchaser's records at any convenient time or place for the purpose of verifying such reports.

The purchaser further agrees as one of the material considerations of this contract that it will offer to sell to the Northwest Door Company of Tacoma, Washington, a Washington corporation, all logs from the timber cut under this contract, suitable for its use, at the prevailing market price.

Form 22

The purchaser agrees as one of the material considerations of this contract that, rates being equal, it will ship via the Northern Pacific Railway all of the manufactured products from the timber sold under this contract and also from the timber cut from lands adjacent thereto and intermixed [fol. 142] therewith, it being the intention hereof that all shipments of the manufactured products from the logging operations on the Lower West Branch and Bear Paw Creeks shall be routed via the Northern Pacific Railway. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment by another line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying such reports.

Form 23

The purchaser agrees as one of the material considerations of this contract that all logs, poles, lumber and other products manufactured from the timber on the land covered by this contract shall be sold and delivered to the Codd Lumber Company, of Spokane, Washington

[fol. 143] Form 24

(a) The purchaser agrees, as one of the material considerations of this contract, that it will ship or cause to be shipped via the Northern Pacific Railway all products manufactured from logs cut from the lands described in Paragraph 1 hereof and from other timber now or hereafter owned, controlled or acquired by it in the sale area, or from timber in other areas acquired in exchange for land or timber described in Paragraph 1 hereof. It is understood that the obligation to ship, set forth in the preceeding sentence, may be satisfied by equivalent quantities of manufactured products from timber cut from areas other than those described and not otherwise committed for shipment via the Northern Pacific Railway. All shipments of such products shall be made at or within a reasonable time after manufacture of the logs cut, whether from said lands or from said other timber. Where the point of destination is not on the line of the Northern Pacific Railway such shipments shall be routed so as to give said Railway Company the longest possible haul, provided its rates are equal to those of competing rail lines.

(b) The purchaser shall make monthly reports to the Western Land Agent of the Railway Company at Seattle, in a form furnished herewith, showing timber removed, if any, and sales made, if any, of logs and poles cut from timber which is the subject of this agreement, and the purchaser shall permit the Railway Company to examine the purchaser's records at any convenient time and place, for the purpose of verifying such reports, or relative to the performance of this contract.

(c) In the event the purchaser shall sell any of the logs cut from timber on said land referred to in Subdivision (a) of this paragraph, the purchaser shall secure from [fol. 144] its vendee a written undertaking in the form of agreement marked "Exhibit A", attached hereto and made a part hereof. Upon receipt by the Railway Company of a fully executed copy of such undertaking, the purchaser shall be credited on its shipping obligations under

this agreement to the extent of the quantity of logs so sold to such vendee. It is specifically understood and agreed, however, that if the Railway Company shall notify the purchaser in writing that any such vendee of the purchaser is in default of compliance with the terms of such undertaking, the purchaser shall forthwith discontinue making any further sales to such vendee of any timber which is the subject of this contract, or logs cut therefrom, until such time as the Railway Company shall notify the purchaser in writing that such sales to such vendee may be resumed.

(d) It is hereby mutually agreed that the damages for breach of this paragraph by the purchaser are not susceptible of exact ascertainment or estimate, and it is therefore further mutually agreed that, in the event the purchaser shall fail in any respect to abide by the provisions of this paragraph, the Railway Company will have sustained damages in the sum of $2 per 1000 board feet of log measure on account of any and all timber, logs, lumber or other products as to which any provision of this paragraph has been breached.

Damages, as aforesaid, shall be allowed in any action brought by the Railway Company to recover damages for breach of this paragraph should the Railway Company elect, as it may elect, to bring such action. Notwithstanding the foregoing provision for liquidated damages, however, it is specifically understood and agreed that the Railway Company may, in the event of breach of this paragraph by the purchaser, elect to pursue any remedy it may be entitled to, and it is further understood and agreed that in the event the Railway Company shall elect [fol. 145] to cancel this contract on account of breach of any provision of this paragraph, the liquidated damage provision of Paragraph 9 shall govern in lieu of the liquidated damage provision of this paragraph.

(e) All provisions of this paragraph shall be and remain in full force and effect until the provisions thereof are fully performed, irrespective of whether or not the purchaser has otherwise performed this contract.

[fol. 146] Exhibit A

Transportation Undertaking

Agreement made this ..... day of ....., by and between ..... hereinafter called ....., and the Pack River Lumber Company, hereinafter called "Lumber Company."

I

Pursuant to the terms of agreement dated ..... for the sale by the Lumber Company to ..... of ..... board feet log measure of logs and as a material part of the consideration for said sale, ... agrees:

(1) To ship or cause to be shipped via the railroad of the Northern Pacific Railway Company all products manufactured from said logs, or an equivalent of such products from other timber, which equivalent, however, shall not be satisfied out of the shipping commitments under other contracts with the Railway Company or the Northwestern Improvement Company. Shipments of such products shall be made at or within a reasonable time after the manufacture of said logs. Where the point of destination is not on the line of Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

(2) To make monthly reports to the Western Land Agent of said Railway Company at Seattle in such form as he may from time to time prescribe, giving such information as in his judgment is necessary to enforce this agreement, and to permit said Railway Company to examine ..... records at any convenient time and place for the purpose of verifying such reports, or relative to the performance of this contract.

[fol. 147] II

In the event ..... shall sell any of said logs, it shall secure from its vendee a written undertaking

in the same form as this agreement. Upon receipt by said Railway Company of a fully executed copy of such undertaking, the ..... shall be credited on its shipping obligations under this agreement to the extent of the quantity of such logs sold to such vendee.

III

This agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

IV

All provisions of this agreement shall be and remain in full force and effect until this agreement is fully performed, irrespective of whether or not the ..... has paid the Lumber Company in full for said logs.

In Witness Whereof, the parties hereto have executed this agreement on the day and year first above written.

By .....
Its

Pack River Lumber Company,

By .....
Its

[fol. 148] Form 25

The purchaser agrees as one of the material considerations of this contract that it will offer to the Northern Pacific Railway Company for transportation over the lines of said Company, and will allow said Company to transport, all shipments of logs, piles, ties or lumber manufactured from the timber herein agreed to be sold, and from lands in that vicinity to be hereafter acquired, destined for points reached by the Northern Pacific Railway, or its connecting lines, provided the Northern Pacific Railway Company will transport said logs, piles, ties or lumber at as low rates as any competing transportation line.

[fol. 149] Form 28

The purchaser expects to make plywood at its Seattle plant from such part of the timber on the above described lands as is suitable, and expects to sell the remainder in the form of logs. The purchaser agrees (railroad rates being equal) to offer to the Railway Company for transportation to points east of Montana, a quantity of manufactured product made at its Seattle mill equal to the quantity which could be made from said timber if all of it were suitable for and actually used in making plywood, on the basis of twenty-five hundred (2500) square feet, surface measurement, of three-eighths (3/8) inch thickness of plywood to one thousand (1,000) board feet, log scale. Said manufactured product shall be offered to the Railway Company for transportation in the ordinary course of operation of the purchaser's mill and in any event within ten (10) years from date hereof.

[fol. 150] Form 29

The purchasers agree as one of the material considerations of this contract, that all of the timber cut from said land shall be manufactured into lumber or shingles at the mills at Fortson and Hazel, on the Darrington Branch of the Northern Pacific Railway Company and that they will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and will allow said Company to transport all shipments of the manufactured products of the timber from the lands herein agreed to be sold, destined for points reached by the Northern Pacific Railway or its connecting lines.

The above clause amended and modified by Second Supplemental Agreement of May 1st, 1941 as follows:

The purchaser (second party hereto) agrees, as one of the considerations of the contract, that all of the timber cut from said land shall be manufactured into lumber or shingles at the mills at Fortson and Hazel on the Darrington Branch of the Northern Pacific Railway Company, and that he will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and will allow said

Company to transport all shipments of the manufactured products of the timber from the lands to be sold, destined for points reached by the Northern Pacific Railway or its connecting lines. It is, however, understood and agreed that the purchaser may, if he so desires, ship and sell, on the [fol. 151] log market as logs, such of the fir and cedar timber as will grade No. 1, but, to the extent feasible, he will arrange such sales so that the manufactured product of the logs so sold will be offered to the Northern Pacific Railway Company for shipment as above provided.

[fol. 152] Form 30

All of such dead timber shall be cut into cordwood and shipped over the Northern Pacific Railway and report shall be made before the tenth day of each month to the Western Land Agent of the Improvement Company of all cord wood shipped from such dead timber during the preceding month, such report to be accompanied by the shipping receipts of the Northern Pacific agent at the point of shipment and by payment for the cord wood shipped at the rate of fifty cents (50¢) per cord.

[fol. 153] Form 31

All of the timber, or timber products, manufactured from the timber herein sold shall be offered to the Railway Company for transportation over its lines of railroad, and the purchaser agrees, as one of the material considerations of this contract, to cut at least one hundred car loads of fence posts from the cedar on said land and to ship the same over the lines of the Railway Company to Montana or to points east thereof.

[fol. 154] Form 32

All shipments of timber from said Section one (1) shall be made over the Northern Pacific Railway and the Purchaser will furnish to the Western Land Agent of the Railway Company a correct copy of the shipping bill for each car shipped, such bills to be furnished daily as shipments are made, so that the Railway Company shall have prompt and correct advice of all shipments made from said land. On or before the 20th day of each month a statement

shall be rendered to the Western Land Agent of the Railway Company of the shipments made during the preceding calendar month, accompanied by payment for the timber cut at the rates above specified.

[fol. 155] Form 33

The saw timber cut upon the said quarter section shall be shipped over the Northern Pacific Railroad, and paid for at the rate of $1.50 per thousand feet, board measure, railroad scale, settlements to be made on or before the 15th day of each month for the months preceding, the amounts so paid to be credited and applied in payment of this contract until the full amount of three million feet shall have been so cut, shipped and paid for, and thereafter at the rate of 75 cents per thousand feet board measure, in the same manner aforesaid, until the full estimated amount of timber on said quarter section, which is hereby fixed and agreed upon as nine million, eight hundred thousand (9,800,000) feet, shall have been paid for, and in the event that said amount of timber shall not be found upon said quarter section, or shall not be cut and removed therefrom, then and in such case, any deficiency between the railroad scale and said estimate shall be made up in cash before any further cutting shall be allowed upon said section; that upon the full payment, as aforesaid for the timber upon said quarter section the party of the second part shall be granted a formal permit, in writing, to enter upon and cut the timber upon any other quarter section of said section, as may be agreed upon at the rate of 75 cents per thousand feet, subject to the same conditions as hereinbefore stated, the agreed estimates upon the several remaining quarter sections of said section being as follows, to-wit: The Northwest quarter Five million, six hundred and eighty thousand (5,680,000) feet, the Southwest quarter six million nine hundred and twenty thousand (6,920,000) feet, the Southeast quarter seven million, nine hundred and sixty thousand (7,960,000) feet. Provided that the said rate of 75 cents per thousand feet board measure to be paid on [fol. 156] all timber cut and shipped from, or estimated

to be upon the said described land, shall be charged and collected only during the life of this agreement, and until the full amount of the consideration herein, the said sum of Twenty-two thousand, five hundred dollars ($22,500), with interest shall have been paid and credited.

[fol. 157] Form 34

It is understood and agreed that the manufactured product of the timber from said lands is to be shipped east by rail and all shipments shall be made over the Northern Pacific Railway to St. Paul and the Chicago, Burlington & Quincy Railway to Chicago.

[fol. 158] Form 35

And the said party of the second part further covenants to and with the said party of the first part, and its successors, that for a period of fifteen years from the date hereof, all lumber and other products manufactured from the timber cut from the premises above described, shipped by rail by said party of the second part, or his assigns in title to points reached by the line of the Northern Pacific Railway Company and its connections, shall be shipped via the said Northern Pacific Railway whenever the rates and facilities for such transportation offered by said Northern Pacific Railway Company shall be equal to those offered by other lines, and the performance of this covenant is hereby declared to be one of the considerations of this contract.

And it is mutually covenanted and agreed by and between the parties hereto that in the event of a breach of the last foregoing covenant, the said party of the second part shall pay to said party of the first part on account of such breach, the sum of two dollars ($2.00) per thousand feet board measure, for every thousand feet of lumber or other product manufactured from said timber, shipped by any railroad route or routes other than over the line of said Northern Pacific Railway.

And, Whereas, this purchase by the said party of the second part is made in contemplation of the organization by the said second party and certain persons associated

with said second party of a corporation to be known as the "Weyerhaeuser Timber Company", and of the transfer to such corporation of the rights acquired by said second party by virtue of this contract, it is further agreed that in the event that said second party shall assign this contract or any rights acquired thereunder to such corporation so to be organized, or to any party, the said second party shall cause to be delivered to the first party hereto promissory notes in due form, as hereinbefore provided, whereby the deferred payments then due under this [fol. 159] contract of purchase shall be secured, and the said second party agrees to secure by endorsement on such notes, their payment to said party of the first part. And the said second party further agrees in the event of such assignment of this contract or of rights acquired hereunder, that such assignee shall execute and deliver a good and sufficient contract in writing, binding such assignee and all persons claiming under such assignee to ship the lumber and other products manufactured from the timber cut from the above described premises over the line of the Northern Pacific Railway in the same manner and to the same extent and with the same provisions for the payment of damages for a breach of such agreement as the said party of the second part is bound by this contract, and upon the execution of such contract by such assignee the party of the second part hereto shall be released from the personal obligation hereof to ship said lumber and said products over the line of the Northern Pacific Railway.

But it is expressly agreed that if the said party of the second part, or said corporation so to be organized, shall sell any of said lands to other parties, such lands so sold, to an amount not exceeding 250,000 acres, shall thereby and thereupon be released from the obligations hereof, as to the shipment of the produce cut from the same.

It is further agreed that in the event of a conveyance of the said premises to an assignee of said party of the second part such deed shall be free from conditions and that the obligation of such assignee to ship the said lumber and other products over the line of the Northern Pacific Railway shall be evidenced by the separate contract of such assignee.

[fol. 160] Form 36

Provided always, and these presents are upon this express condition, that all the merchantable timber standing, being or growing upon the lands hereinbefore described, which shall be cut therefrom by the said party of the second part, its successors or assigns, shall be manufactured into lumber at Bonner, Missoula county, in the state of Montana, and shall be delivered to the Northern Pacific Railway Company, its successors or assigns, for transportation over its lines of railway as now owned and operated, or hereafter to be owned or operated, to points of destination located upon the said lines; and whenever the point of destination of any such lumber is not situated upon any line of railway now owned or operated by the party of the first part, or which the said party of the first part shall hereafter own or operate, such lumber shall be carried over said lines of railway of said party of the first part, its successors and assigns, as far as practicable toward said point of destination; provided, however, that this condition shall not apply to such of said lumber so manufactured at Bonner as aforesaid, that may be necessary to supply the local demand for use in the immediate vicinity of said place of manufacture; provided, also, that the Northern Pacific Railway Company, its successors or assigns, shall not charge the party of the second part a higher rate than that regularly charged from the same point to the point of destination by any other railway company, and shall not charge a higher rate than that charged other shippers at the same point. And in the event of the breach of the said condition by the said party of the second part, its successors or assigns, the said party of the first part, or its successor, may enter upon the said premises for the condition broken and forfeit the right, title and interest of the party of the second part, its successors or assigns, therein and thereto, and may recover the said premises and all thereof.

[fol. 161] It is mutually covenanted and agreed by and between the parties hereto that in the event of a breach of the above condition, the said party of the first part, or its successor, may have the option, in lieu of entering upon the said lands for the breach of said condition, of

demanding and receiving from the said party of the second part, its successors or assigns, the sum of one dollar and fifty cents ($1.50) per thousand feet, board measure, for every thousand feet, board measure, of timber cut from and taken from said lands and shipped either before or after the same is manufactured by any means or route other than by means of and over the railway aforesaid of the said party of the first part, or its successor. And the said party of the second part, for itself and for its successors and assigns, covenants and agrees that in the event of a breach of said condition, and in the event of the exercise of the said option upon the part of the said party of the first part or its successor, that it will pay to the said party of the first part, or its successor, the said sum of one dollar and fifty cents ($1.50) per thousand feet, board measure, for every thousand feet, board measure, of timber so cut and shipped as aforesaid; and it is further mutually agreed by and between the parties hereto that the said option hereinbefore last expressed shall be a continuing option of the party of the first part, and that the exercise by it, or by its successor, of the said option in the case of any breach of said condition, to collect the said one dollar and fifty cents ($1.50) per thousand feet, board measure, shall not preclude the party of the first part, or its successor, from entering for condition broken, in the event of any such breach of said condition which shall thereafter at any time or time occur.

[fol. 162] Form 37

Provided, always and these presents are upon the express condition that such of the timber upon the lands hereinbefore described as it is practicable to manufacture at some point or points on the main line of Grantor's railway, or its branch lines of railway in the State of Montana, shall be so manufactured and delivered to the said grantor, its successors or assigns, for transportation over its lines as now owned or operated, or hereafter to be owned or operated, to points of destination located upon said lines, and whenever the point of destination is not located upon said lines, such lumber shall be carried over said lines as far as practicable towards its point of destination; pro-

vided, also, that the grantor, its successors or assigns, shall not charge a higher rate than that regularly charged by other railway companies between the same points for similar service, or a higher rate than that charged other shippers between the same points.

Form 38

as a further material consideration for such sale, agrees that, rates being equal, it will ship via the Northern Pacific Railway all logs and other unmanufactured forest products and all lumber and other products manufactured from the timber cut from said premises, and all lumber and other products manufactured from timber removed from other lands so situated as to require hauling the timber cut therefrom over the road to be constructed by the Lumber Company across the lands above described. Such shipping commitment may, at the option of the Lumber Company, be fulfilled in whole or in part by shipping an equivalent quantity of lumber and other products manufactured from timber other than that hereinabove specified and not covered by any other contract now in effect with the Railway Company or the Northwestern Improvement Company. Such shipments shall be made from time to time in the ordinary course of business as the timber is [fol. 163] manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the Lumber Company is not increased over the cost of shipment over another rail line. The Lumber Company shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying such reports.

[fol. 164] Form 39

That from the trees so cut the party of the second part will take all the timber suitable for shingles; that they will manufacture said timber into shingles and ship the shingles over the Northern Pacific Railroad.

[fol. 165] MINERAL LAND LEASE

Forms:

"A"

The lessee will ship all ore mined from the premises over the line of the Northern Pacific Railway Company and its connections provided rates and facilities are as favorable as those of any competing line.

"B"

The lessee will offer to the lessor for transportation over its lines of railway, and allow the lessor to transport all calcite taken from the premises or any adjacent lands which the lessee may now or hereafter control, provided the lessor shall transport such calcite at as low a rate as any competing line.

"C"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all granite removed from the premises provided the rates and services shall equal those of any competing line.

"D"

The lessee agrees for itself, its successors and assigns, as one of the material considerations of this contract, that rates and service being equal to those of any competing line, it will ship via the Northern Pacific Railway Com-
[fol. 166] pany or its connections, all phosphate or phosphate rock mined and shipped from the premises; when the point of destination of the shipment is not on the line of the Northern Pacific Railway Company or its connections, such shipments shall be routed so as to give said Northern Pacific Railway Company the longest haul possible, provided rates and service shall be equal to those of any competing line.

"E"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica or products manufactured from the silica taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said silica or manufactured products at as low rates as any competing transportation lines.

"F"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica or products manufactured from the silica taken from the premises herein leased, provided the lessor shall transport said silica or manufactured products at as low rates as any competing transportation line.

"G"

The lessee agrees that he will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica, silica sand and clay, or products manufactured therefrom, taken from the premises [fol. 167] herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said silica, silica sand and clay, or manufactured products, at as low rates as any competing transportation line.

"H"

The said party of the second part further covenants and agrees that he will ship all stone quarried and taken out of said land, or any part thereof, or upon any adjoining land which he may now or hereafter own or control, exclusively over the line or lines of said railroad controlled or operated by the party of the first part, his successor or successors; *provided*, that the party of the first part shall give the party of the second part competitive rates for the transportation of said stone over his lines to all points

reached by competing lines of transportation. The party of the second part shall perform, or cause to be performed, all work and labor, and shall bear all the expense of loading and unloading all cars used in the transportation of said stone.

"I"

The said party of the second part further covenants and agrees that he will ship all stone quarried and taken out of said land, or any part thereof, or on any adjoining land which he may now, or hereafter, own or control, exclusively over the line or lines of railroad controlled or operated by said party of the first part, his successor or successors; *provided,* that the party of the first part shall give the party of the second part competitive rates for the transportation of said stone over said lines to all points reached [fol. 168] by competing lines of transportation. The party of the second part shall perform, or cause to be performed, all work and labor, and shall bear all the expenses of loading and unloading all cars used in the transportation of said stone.

"J"

The Lessee agrees that he will offer to the Northern Pacific Railway for transportation over the lines of said Company to competitive points and will allow said Company to transport all shale, clay, brick, blocks and other articles manufactured from the shale and clay from the demised premises, or from any adjacent land which the Lessee may now or hereafter own or control, with the exception of any bricks, blocks and other articles manufactured which the Lessee may require for buildings, kilns, or other structures on property aforementioned; provided the Northern Pacific Railway Company shall transport such articles at rates corresponding with those charged by it for transportation of the same articles in this territory under like conditions.

"K"

The Cement Company will offer to the Railway Company for transportation all cement and cement products

manufactured by it destined to points reached by the Railway Company's lines or by its lines and connections, provided it or it and its connections as the case may be offer as low rates as any competing railway or rail and water lines.

[fol. 169] "L"

All ores mined from the premises or adjacent premises controlled by the lessees shall be shipped over the line of the Northern Pacific Railway Company and its connections, provided rates and facilities are as favorable as those of any competing line.

"M"

The lessee agrees that it will offer to the Northern Pacific Railway Company for transportation over the lines of said Company, and will allow said Company to transport all stone taken from the demised premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided the Northern Pacific Railway Company will transport said stone at as low rates as any competing transportation line or carrier.

"N"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of marble, or products manufactured from the marble, taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said marble, or manufactured products, at as low rates as any competing rail line. Where the point of destination of the product is not on the line of the lessor, such shipments shall be routed to favor the lessor with the longest haul, if the expense to the lessee is not increased over the cost of shipment over another rail line.

[fol. 170] "O"

All ores mined and concentrates and products taken from the premises destined for points reached by the Northern

Pacific Railway, or its connecting lines, shall be offered to the Northern Pacific Railway Company for shipment over its lines, provided rates and facilities are equal to those of any competing line.

"P"

The lessee covenants that it will ship or cause others to ship over the lines of the Northern Pacific Railway Company and its connections, provided the rates and service shall be equal to those of any competing line, all diatomaceous earth mined and shipped from the premises either in its crude state or that may be processed in its plant at Yakima, and all diatomaceous earth from adjacent lands, the rail shipment of which is controlled by the lessee or which can be prepared by the manufacturing processes established in said plant to meet the markets developed by the lessee.

Where the point of destination of the shipments herein provided for is not on the line of the Northern Pacific Railway Company or its connections, such shipments shall be routed so as to give said Northern Pacific Railway Company the longest haul possible, provided rates and service shall be equal to those of any competing line.

"Q"

That the stone so dug or quarried upon said tract of land shall be removed therefrom by shipment of the same upon cars over the line of said Northern Pacific Railroad Company which is now being operated by said parties of the first part; that the measurements of said stone so quarried and shipped shall be determined by the weight of the same as specified and shown upon the bills of lading of said Railroad Company for said stone so shipped.

[fol. 171] "R"

The party of the second part further covenants and agrees that he will ship all of the stone quarried or taken out of said land over the railroad controlled or operated by the party of the first part.

"S"

All shipments of stone or other freight to and from said quarry shall be made over the lines of the Northern Pacific Railway.

"T"

The lessee agrees that the products manufactured from all clay removed from the premises, as well as from all lands now or hereafter controlled by it, so far as such clay products are destined for rail shipments, as well as all incoming freight destined for use in the removal and treating of said clay, shall be shipped over the lines of the lessor, provided rates and services shall equal those of any competing lines.

[fol. 172] COAL LAND LEASE FORMS

Form "A"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all coal taken from the premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided said Railway Company shall transport such coal at as low a rate as any competing line.

Form "B"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all coal and all manufactures and by-products thereof taken from the premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided said Railway Company shall transport such coal at as low a rate as any competing line.

Form "C"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Com-

pany and allow said Company to transport all coal taken from the premises or from any adjacent lands which the lessee may now or hereafter own or control, except such coal hauled by wagon or truck for local use within a radius of ten miles from the mines or to points not touched by railroad, provided the said Company shall transport such coal at as low a rate as any competing line.

[fol. 173] Form "D"

The lessee covenants that all coal removed from the premises, as well as from adjacent lands now or hereafter controlled by him, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided the rates and service shall equal those of any competing line.

[fol. 174] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed July 31, 1953

The United States of America, plaintiff, by its attorneys, acting pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for a summary judgment in favor of the United States on the ground that the records, papers and files in this action establish that there is no genuine issue as to any material fact, and that on the undisputed facts the United States is entitled as a matter of law to the judgment for which it moves herein.

Robert H. Weinstein, Gerald F. McLaughlin, Attorneys for Plaintiff.

Dated: July 31, 1953

[fol. 175] AFFIDAVIT OF SERVICE (omitted in printing).

[fol. 176] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE TAKING DEPOSITIONS OF VARIOUS WITNESSES—Filed July 6, 1954

It Is Hereby Stipulated by and between the parties to the above entitled action, through their respective attorneys, that the depositions of the persons named hereinbelow may be taken at the instance of defendants on oral interrogatories before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, the officer before whom each deposition is to be taken to put the witness on oath and, personally, or by someone acting under his direction and in his presence, to record the testimony of the witness and all objections made at the examination.

It Is Further Stipulated that the taking of said depositions shall commence on or about August 7, 1952, at Yakima, Washington, and that each witness shall be examined at the location under which his name appears or such other location as may be agreed upon, and that such depositions may be continued from day to day and from place to place until concluded. The exact time and place and the person before whom each such deposition is to be taken shall be agreed upon at a later date by the respective counsel for the parties.

It Is Further Stipulated that if for any reason the deposition of any person named below cannot be taken as scheduled, the deposition of some other person may be taken [fol. 177] in lieu thereof, and that the deposition of any

person not named below may be taken to supplement any deposition with respect to any named industrial or grazing lessee. All such depositions shall be taken at such places as may be mutually agreeable to the parties and in the same manner with like effect as in the case of the persons named below.

It Is Further Stipulated that subject to consent given by the witness, the submission of any deposition to the witness, when fully transcribed, for examination and reading to or by him and opportunity to the witness to make any changes in the form or substance of said deposition or to sign the same are hereby expressly waived.

It Is Further Stipulated that, except as otherwise provided in this stipulation, said depositions shall in all respects be governed by Rules 26, 31 and 32 of the Rules of Civil Procedure for the District Courts of the United States.

It Is Further Stipulated that the named persons referred to above and the locations at which it is tentatively proposed their respective depositions shall be taken are as follows:

Ellensburg, Wash.

Robert Rutter	

Yakima, Wash.

M. L. Bozelle	Inland Pipe and Supply Co.
Ralph E. Strand	Strand Fruit & Storage
Winston E. Brady	Yakima Fruit Growers Assn.
Walter Kohagen	Yakima County Horticultural Union
Virgil O. McWhorter	Lessee of grazing land
[fol. 178] Alex Dunnitt	" " " "
Armand D. Olson	" " " "
Russell Brown	" " " "

Walla Walla, Wash.

L. D. Felch	Mojonnier & Sons
William Berney	Walla Walla Produce Co.

Spokane, Wash.

C. E. Fox	Armour & Co.
C. W. Johnson	Roundup Grocery Co.
H. C. Gemberling	Gemberling Grain Co.
G. A. Anderson	Rosalia Produce Co.
E. H. Braden	Spokane Paper & Stationery Co.
Derwin F. Lang	Lessee of grazing land

Missoula, Mont.

Wm. G. Tremper	East Side Service Co.
O. C. Garlington	Missoula Mercantile Co.
Wm. Steinbrunner, Jr.	Missoula Brewing Co.
Howard Raser	Missoula Livestock Auction Co.

Deer Lodge, Missoula, Butte, or Helena, Mont.

Peter Pauly	Lessee of grazing land.

Butte, Mont.

Roy E. Murray	Murray Motor Corp.

[fol. 179] *Helena, Mont.*

C. M. Wall	Power-Townsend Co.
Willard T. Anderson	Eddies Bakeries
Frank Carey	Lessee of grazing land
Ralph Miracle	Montana Livestock Commission
E. A. Phillips	Secretary, Montana Stockgrowers Assn.
Everett E. Shuey	Secretary, Montana Woolgrowers Assn.

Billings, Mont.

George R. Kinsman	Billings Hardware Co.
Everett M. Baker	Baker Transfer & Cold Storage Co.
M. J. Delmore	Northern Pacific Railway Co.
Wm. Magelsen	Lessee of grazing land

Miles City, Mont.

Wm. P. Lakin	Lakin Seed Co.
Kenneth M. Brown	Midland Coal & Lbr. Co.
J. R. Kelley	Yellowstone Distributing Co.
George Davidson	Lessee of grazing land
M. C. Simpson	" " " "
Susan Haughian	" " " "
A. W. Bradshaw	" " " "
C. A. Mallett	" " " "
Geo. M. Williamson	" " " "
W. R. Woodson	" " " "
Wallace Ulmer	" " " "
W. E. Husband	Northern Pacific Railway Co.
Henry Berg	" " " "

[fol. 180] *Jamestown, N. D.*

Oscar A. Amundson	Bridgeman Russell Co.
John Olson	C. H. Carpenter Lbr. Co.
Palmer R. Nelson	Jamestown Grocery Co.
Robert Eddy	Eddy Furniture Co.
E. T. Bleecker	Northern Pacific Railway Co.

Fargo, N. D.

T. Klugman	Interstate Seed & Grain Co.
E. E. Simonsen	Fargo Foundry Co.
Carl Ekern	" " "
Oscar H. Kjorlie	Oscar H. Kjorlie Co.
A. C. McKean	Northern Pacific Railway Co.

Grand Forks, N. D.

L. A. Brown	Agsco Chemicals, Inc.
Ed A. Bostrom	Grand Forks Coca Cola Bottling Co.
Earl Isaacson	Simonson Cash Supply Co.
E. R. Broderick	Northern Pacific Railway Co.

Bemidji, Minn.

Roy Lundmark	Dickinson Lbr. Co.
H. A. Krebs	H. A. Krebs Co.
R. L. Giles	Bulk Oil Storage
G. T. Flynn	Northern Pacific Railway Co.

St. Cloud, Minn.

H. W. Landwehr	Landwehr Transfer & Storage, Inc.
Thomas A. Donlin	Donlin Co., Inc.

[fol. 181] *Wadena, Minn.*

J. F. Peterson	Peterson-Biddick Corp.

Detroit Lakes, Minn.

W. E. Reid	Lumber and farm implements
Mr. Taylor	Wilcox Lbr. Co.

St. Paul, Minn.

J. G. Woodworth	Retired Vice President Traffic, Northern Pacific Railway Co.

This stipulation shall be effective as of August 5, 1952.

Dated at Seattle, Washington, this 6th day of July, 1954.

Edward M. Feeney, Attorney for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

[fol. 182] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

AFFIDAVIT OF R. G. LINDGREN—Filed October 1, 1954

State of Washington,
County of King, ss.:

R. G. Lindgren, being first duly sworn, on oath deposes and says:

That he is and has for over 40 years been a civil engineer, that he has been employed by the Northern Pacific Railway Company in engineering and other capacities continuously since February 1924; that since May, 1931 he has been employed in the Land Department of said Railway Company as Field Engineer and in such capacity has made various studies of the resources embraced in the land grants

to said Company, including timber; that in connection with the preparation for trial of the above case, he made a study of the United States Forest Service records at Missoula, Montana and Portland, Oregon with a view to determining the relationship between the estimated volume of timber owned by said Railway Company and Northwestern Improvement Company to the total estimated volume of timber in all ownerships.

[fol. 183] That Missoula, Montana is the headquarters for Region 1 of the United States Forest Service with jurisdiction over National Forests in Montana, Northern Idaho and Northeastern Washington; that Portland, Oregon is the headquarters for Region 6 of said Forest Service with jurisdiction over National Forests in all of Washington, except the portion in Region 1.

That he is familiar with the survey of timber resources in said States made by the Forest Service pursuant to the McSweeney-McNary Forest Research Act of 1928 as amended (45 Stats. p. 702), one of the purposes of which was to obtain a nationwide inventory of merchantable timber; that said inventory was obtained in Regions 1 and 6 between the years 1935 to 1942 by requesting all private owners of timber to submit to the Forest Service their estimates of timber volumes of various species owned by them in the respective States, by requesting like estimates of timber volumes owned by States and municipal subdivisions and by making an estimate of timber volumes of various species in the various National Forests, owned by the United States; that the various estimates were adjusted by the Forest Service to place them as nearly as possible on a uniform basis; that Northern Pacific Railway Company and Northwestern Improvement Company in connection with said inventory reported to the Forest Service their estimates of the volume of timber owned by them in said States; that your affiant examined the original records of such inventory and from them has determined and would testify, if called as a witness in the trial of the above case, that the estimated volume of timber in all [fol. 184] ownerships and in the Northern Pacific Railway Company and Northwestern Improvement Company in such States as shown by said inventory in both Regions 1 and 6 is as follows:

N. P. Ry and NW. I. Co.

	All Ownerships Vol, M. Bd. Ft.	Vol. M. Bd. Ft.	Percent of All Ownerships
States:			
Montana	43,929,590	2,627,002	5.98
Idaho	37,207,973	2,148,253	5.77
Washington	243,797,385	10,944,390	4.49
	324,934,948	15,719,645	4.84

R. G. Lindgren

Subscribed and sworn to before me this 29th day of September, 1954.

M. P. Nadeau, Notary Public in and for the State of Washington, residing at Seattle.

Receipt Acknowledged, October 1, 1954, Edward M. Feeney, Atty., U. S. Dept. of Justice.

[fol. 185] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION AS TO USE OF COPIES IN LIEU OF ORIGINAL DOCUMENTS; AS TO CERTAIN INFORMATION IN CONNECTION WITH INDUSTRIAL LEASES AND GRAZING LEASES—Filed July 6, 1954

It Is Hereby Stipulated by and between the parties to the above entitled action, through their respective attorneys, as follows:

1. That either party may offer and there shall be received in evidence a copy of any record, correspondence or any other document, with the same force and effect as if the original thereof had been offered in evidence, subject, however, to the right of either party within a reasonable time to demand and receive the production of the original of any such document for the purpose of comparison and correction of the copy to conform to the original where errors are found.

2. (a) That if an officer of the Industrial Development Department of defendant Railway Company were called by defendants he would testify as follows at the trial of this cause:

> That he is in charge of the records from which the data shown on Exhibit A, consisting of four sheets, [fol. 186] attached hereto and made a part hereof, was obtained; that all such data is shown on such records of the leases listed on such exhibit; that the leases listed on such exhibit and the data there shown with respect to each are the leases and data relating to the leases made to the lessees of industry sites named in the stipulation between the parties hereto, dated August 5, 1952, re taking depositions of various witnesses;

(b) That if an officer of the Land Department of defendant Railway Company were called by defendants he would testify as follows at the trial of this cause:

> That he is in charge of the records from which the data shown on Exhibit B, consisting of Sheets 1 to 30, inclusive, and Exhibit C, consisting of one sheet, attached hereto and made a part hereof, was obtained; that all such data is shown on such records of the leases listed on such exhibit; that the leases listed on such exhibit and the data there shown with respect thereto are the leases and data relating to the leases made to the lessees of grazing lands named in said stipulation;

(c) That the data shown on said Exhibits A, B and C be deemed proven facts, subject, however, to correction by any party of any error in such data.

[fol. 187] This stipulation shall be effective as of August 7, 1952, and is the stipulation referred to in the depositions taken pursuant to the stipulation of August 5, 1952.

Dated at Seattle, Washington, July 6, 1954.

Edward M. Feeney, Attorney for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

[fol. 188]

EXHIBIT "A" TO STIPULATION

(P.153)

INDUSTRIAL LEASES

No.	Industry	Location	Dat.	Term	PRECEDING LEASES WITH PRESENT LESSEE													
					No.	Date	Term	No.	Date	Term	No	Date	Term	No.	Date	1 m		
55208	Interstate Seed & Grain Co.	Fargo,N.D.	2-1-37	20 yrs														
54129	Fargo Foundry Co.	"	3-1-36	35 "	43180	2-1-26	15 yrs	39990	4-1-23	Indef	(15728	9-1-05	Indef					
											(20912	4-1-08	15 yrs					
63783	Oscar H. Kjorlie Co.	"	7-16-44	Indef	51662	9-16-33	Indef											
67195	Agsco Chemicals, Inc.	Grand Forks N.D.	4-2-47	"														
54318	Grand Forks Coca Cola Bottling Co., Inc.	"	9-15-36	20 yrs														
50774	Simonson Cash Supply Co.	"	10-1-32	Indef														
60042	"	"	7-1-41	"	59434	4-25-41	2 mos											
67077	Eddy Furniture Co.	Jamestown, N. D.	2-1-47	"														
34145	Bridgeman-Russell Co.	"	1-15-19	"														
66116	C. H. Carpenter Lbr. Co.	"	6-14-46	"														
66185	Jamestown Grocery Co.	"	9-15-47	20 yrs	37463	9-15-27	20 yrs											
63536	Lakin Seed Co. (Partnership)	Miles City, Mont.	10-1-44	"	53033	10-1-34	10 yrs	41869	10-1-24	10 yrs	38117	10-1-21	3 yrs	20740	10-1-08	Indef		
31215	Midland Coal & Lumber Co.	"	2-1-17	Indef														
45199	"	"	11-1-27	"														
59264	"	Glendive, Mont.	11-16-40	25 yrs	(23735	3-1-11	Indef	12659	9-1-03	Indef	12098	5-15-03						
					(58501	3-16-40	"	31318	3-1-17	"								
73547	Yellowstone Distributing Co.	Miles City Mont.	4-1-51	Indef										(20675	3-1-09	25 yrs		
											(30386	7-1-16	25 yrs	(26138	1-1-13	Indef		
64059	Billings Hardware Co.	Billings, Mont	1-1-45	25 yrs	48369	7-1-31	25 yrs	34945	7-1-19	25 yrs	(31040	1-1-17	25 "					
71762	Baker Transfer & Storage Co.	"	5-1-50	20 yrs	(27585	5-1-14	Indef											
					(27923	8-1-14	"											
					(52655	8-1-34	20 yrs	27922	8-1-14	20 yrs								
					(59368	1-1-42	Indef											
					(63384	12-1-43	"											
59428	Murray Motor Corp.	Butte,Mont	6-16-41	15 yrs														
17890	T. C. Power Co.	Helena,M.	10-1-06	Indef														
58957	Armour & Co.	Spokane,Wn	6-1-41	15 yrs	30189	6-1-16	25 yrs	Assigned to Armour & Co.			12-22-17							
68093	The Jefferson Company	"	2-1-48	15 "	62840	8-15-44	Indef											
70802	Roundup Grocery Co.	"	4-1-50	15 "														
64987	Gemberling Grain Co.	Tokio,Wn.	10-1-45	Indef														
56369	H. C. Gemberling, dba Grain Elevator Sites	Cunninghem Wash.	6-16-38	"														
60785	Rosalia Produce, Inc.	Rosalia,Wn.	8-15-42	"														
58246	" (Grain Elev.)	Plaza,Wn	6-1-40	"														
58247	" (Grain Whse.)	" "	6-1-40	"														
58248	" "	" "	6-1-40	"														
65847	" (Coal Shed)	" "	8-1-46	"														
65863	" (Grain Elev.)	" "	8-1-46	"														
65864	" (Grain Whse.)	" "	8-1-46	"														
58990	"	McCoy,Wn.	5-1-41	10 yrs	(55355	5-1-37	Indef											
					(53714	8-1-35	"											
					(40067	8-1-29	"											
					(58936	1-1-47	"											
59610	" (Not Bulk)	Donahue,Wn.	5-1-41	"	(47068	8-1-29	"											
					(56802	5-1-39	"											
46550	Inland Pipe & Supply Co.	Yakima, "	1-1-29	25 yrs														
68148	"	" "	7-1-48	" "														
73233	A. D. & R. E. Strand dba Strand Fruit & Storage	Cowiche,Wn.	7-15-51	25 "	(57139	4-5-39	"											
					(43744	7-15-26	25 yrs											

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[fol. 189]

INDUSTRIAL LEASES

	Industry	Location	Date	Term	PRECEDING LEASES WITH PRESENT LESSEE No.	Date	Term	No.	Date	Term	No.	Date	Term	
	YAKIMA FRUIT GROWERS ASS'N													
45900	Building site	Weikel, Wash.	7-1-28	50 yrs	43903	9-1-8	10 yrs							
44959	Subway between buildings	"	8-5-27											
44425	Oil tank storage site	Gleed, Wash.	3-15-27	Indef										
58013	Encroachment, part of bldg.	Sawyer, Wash.	11-10-39	"										
44731	Sewer pipe crossing	" "	6-1-27	"										
44143	Water Pipe Line	Zillah, "	12-4-26	"										
50776	Light pole	Selah, "	10-1-32	"										
73168	Building site	Wapato, "	2-15-51	21 yrs	47801	2-15-30	21 yrs	(43258	2-15-26	25 yrs				
								(37600	6-1-21	10 "	30228	6-1-16	Indef	Assigned to Yakima Fruit Growers Ass'n 5-8-18
42736	Drain pipe	" "	8-15-25	Indef										
48005	Building site	Prosser, "	5-15-50	25 yrs										
36374	Fruit warehouse site	Kennewick, Wn.	3-1-22	50 "										
60808	Fruit warehouse site	" "	8-1-42	25 "	32295	8-1-17	25 yrs	Assigned to Yakima Fruit Growers Ass'n. 9-29-19						
	YAKIMA COUNTY HORTICULTURAL UNION													
58897	Protection	Tieton, Wash.	1-41	Indef										
55470	Loading platform	" "	6-1-37	10 yrs ex.										
52863	Box storage	" "	11-1-34	Indef										
45593	Building site	Weikel, "	4-2-28	10 yrs Ex.20 yrs										
64328	Box storage	Naches, "	6-1-45	Indef										
65624	Loading platform	Gleed, "	5-1-46	"	43422	5-1-26	10 yrs							
45878	Platform	Wapato, "	7-15-28	"	29192	7-15-45	Indef							
72472	Parking lot	Yakima, "	10-1-50	"										
65841	" "	" "	8-15-46	"	Cancelled 6-19-49									
41736	Building site	" "	1-1-25	50 yrs	38257	1-1-22	3 yrs							
41110	" "	" "	4-15-24	50 yrs	30050	4-15-46	10 yrs							
64248	Mojonnier & Sons	Sunnyside, "	5-1-45	25 yrs										
50923	" "	Walla Walla, Wash.	Eff.1-15-33 11-16-32	20 yrs										
58186	Pasco Growers Assn. Sublet to Baker Produce Co	Kennewick, Wn.	6-1-40 4-1-51	20 yrs8mo 10 yrs										
65142	Walla Walla Produce Co.	Walla Walla, Wn.	3-1-46	25 yrs	61851	4-1-46	Indef							
65057	Eddy's Bakery	Yakima, Wash.	1-1-46	25 yrs	(47690	2-15-30	24 yrs	Assigned to Eddy's Bakery 5-3-40						
					(46567	2-15-29	25 yrs	Assigned to Eddy's Bakery 5-3-40						
41664	Peterson Biddick Corp.	Jamestown, N.D.	8-15-24	Indef										
65428	Peterson Biddick Corp.	Wadena, Minn.	2-1-46	20 yrs	29873	2-1-16	30 yrs	29627	10-1-15	Indef				
60469	Dickinson Lbr. Co.	Bemidji, Minn.	10-1-42	Indef	M&I 1178	10-1-40	Indef							
64883	H. A. Krebs Co.	" "	10-1-45	"										
71026	W. E. Reid	Detroit Lakes, Minn.	8-1-49	"	62495	2-1-44	Indef	53349	5-1-35	Indef				
71349	Wilcox Lbr. Co. Corp.	" "	11-1-49	15 yrs										
67559	Landwehr Transfer & Storage, Inc.	St.Cloud, Minn.	4-16-47	10 "										
65477	The Donlin Co., Inc.	" "	1-1-46	10 yrs	(45133	10-15-27	20 yrs	44108	11-15-26	"				
					(45343	12-15-27	9 yrs 10 mo.							
					(54944	12-16-36	Indef							
53098	East Side Service Co.	Missoula, Mont.	2-1-35	Indef	39944	3-1-25	Indef	Assigned to East Side Service Co. 10-22-34						
53466	Missoula Mercantile Co.	" "	6-1-35	25 yrs	26827	6-1-10	25 yrs							
64082	Sicks' Missoula Brewing Co.	" "	2-1-45	Indef	42588	7-1-25	Indef	Assigned to Missoula Brewing Co. 7-1-33						
66694	Missoula Live Stock Auction Co.	" "	8-16-46	"	59991	8-16-41	5 yrs	Assigned to Missoula Livestock Auction Co. 7-14-45						

[fol. 190] EXHIBIT "B" TO STIPULATION

Grazing Leases Issued to Sylvan and Peter Pauly

Year	Acres
1926	5,142.75
1927	5,142.75
1928	8,249.96
1929	8,728.86
1930	8,728.86
1931	8,728.86
1932	10,008.86
1933	10,008.86
1934	10,008.86
1935	10,008.86
1936	11,870.50
1937	11,870.50
1938	10,662.06
1939	10,662.06
1940	15,144.00
1941	14,504.00
1942	14,504.00
1943	14,504.00
1944	9,429.70
1945	9,429.70
1946	9,429.70
1947	1,933.20
1948	1,933.20
1949	1,933.20
1950	1,933.20
1951	1,933.20

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GRAZING LEASES ISSUED TO SYLVAN AND PETER PAULY, DEER LODGE, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. W	Acres	County	Remarks
L-815	Nov. 22, 1907	Peter Pauly	W½	29	10	6	320.00	Powell	Cancelled Sept. 1910 account default in rental.
			All	31	"	"	640.08	"	
L-842	Jan. 31, 1908	Peter Pauly	SW¼	33	9	9	160.00	Powell	Cancelled Sept. 1912 account sale to lessee.
L-1032	Oct. 16, 1908	Peter Pauly	W½	7	10	6	321.20	Powell	Transferred to Lease No. 1662.
L-1662	Feb. 24, 1911	Peter Pauly	All	7	10	6	641.20	Powell	Cancelled April 10, 1928 - included in subsequent leases.
			All	17	"	"	640.00	"	
			All	19	9	7	640.04	"	
			All	31	11	6	621.79	Lewis & Clark	Cancelled Feb. 11, 1914 account sale to other party.
			N½	1	10	7	313.36	Powell	
			Lots 3,4, SW¼SE¼	13	10	7	114.70	Powell	Cancelled April 19, 1913 account sale to other party.
L-3076	May 9, 1917	Peter Pauly	All	21	9	7	640.00	Powell	Cancelled April 10, 1928 - included in subsequent lease.
L-4985	Aug. 27, 1925	Peter Pauly	E½, SW¼	29	9	7	478.90	Powell	Cancelled April 10, 1928 - included in subsequent lease.
L-5277	May 3, 1926	Peter Pauly	All	9	9	7	640.00	Powell	Cancelled April 10, 1928 - included in subsequent lease.
			Lot 2, E½, NW¼, N½SW¼	11	"	"	592.36	"	
			All	15	"	"	640.00	"	
			All	17	"	"	633.72	"	
			N½, SW¼, W½SE¼	25	"	"	560.00	"	
			All	27	"	"	640.00	"	
			NW¼	29	"	"	158.30	"	
			All	33	"	"	640.00	"	
			All	35	"	"	638.37	"	
L-5864	March 1, 1928	Peter Pauly	All	7	10	6	641.20	Powell	Cancelled May 3, 1946 account sale to lessee.
		Assgd. 3/12/38 to Williams & Pauly	All	17	"	"	640.00	"	
			All	19	9	7	640.04	"	
			All	21	"	"	640.00	"	
			W½W½	27	"	"	160.00	"	
			All	29	"	"	637.20	"	
			All	33	"	"	640.00	"	
			All	35	"	"	638.37	"	
			All	9	9	7	640.00	"	Cancelled June 1940 account sale to other party.
			Lot 2, E½, NW¼, N½SW¼	11	9	7	592.36	"	Cancelled Dec. 27, 1943 account sale to other party.
			All	15	9	7	640.00	"	Cancelled May 3, 1946 account sale to U.S.
			All	17	"	"	633.72	"	
			Lots 2,3,4,5, S½NW¼, S½	23	"	"	545.97	"	
			N½, SW¼, W½SE¼	25	"	"	560.00	"	
			E½, E½W½	27	"	"	480.00	"	
L-7300	June 13, 1932	Peter Pauly	E½	23	11	10	320.00	Powell	Pending.
		Assgd. 6/16/45 to Williams & Pauly	All	25	"	"	640.00	"	
		Assgd. 11/16/48 to S.J.Pauly	NE¼NE¼, S½NE¼, SE¼SW¼, SE¼	35	"	"	320.00	"	
L-8928	July 2, 1936	Peter Pauly	All	3	15	11	653.20	Powell	Pending.
		Assgd. 6/18/45 to Williams & Pauly	All	5	15	11	650.80	"	Cancelled March 1937 account sale to other party.
		Assgd. 12/31/48 to Harry C. Pauly	N½, N½SW¼, SE¼	1	15	12	557.64	"	
L-10086	May 13, 1940	Williams & Pauly	All	3	11	11	627.72	Powell	Cancelled May 3, 1943 account sale to lessee.
			All	5	"	"	626.80	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	15	"	"	644.29	"	
			All	31	12	11	663.13	"	
			All	33	"	"	640.00	"	

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Grazing Leases Issued to A. W. Bradshaw and Bradshaw Land & Livestock Company

Year	Acres
1936	320.00
1937	320.00
1938	---
1939	---
1940	7,279.41
1941	7,919.41
1942	6,319.41
1943	6,319.41
1944	4,412.85
1945	4,412.85
1946	4,412.85
1947	4,412.85
1948	2,907.16
1949	2,907.16
1950	2,907.16
1951	2,907.16

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GRAZING LEASES ISSUED TO A. W. BRADSHAW AND BRADSHAW LAND & LIVESTOCK CO.

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-9027	Sept. 22, 1936	Bradshaw Land & Livestock Company	S½	25	9	52	320.00	Custer	Cancelled Dec. 11, 1937 account default in rental
L-9973	March 23, 1940	Bradshaw Land & Livestock Co. and Madge I. Holmes. Interest of B.L.L.Co. Assgd. 4/2/42 to J. R. Bradshaw Interest of Madge I. Holmes assgd. 3/16/45 to Jim Rayburn Assgd. 4/14/47 to Albert Bixler	All	1	7	51	640.40	Custer	Assigned April 14, 1947 to Albert Bixler
			Part east of river	35	8	51	238.28	"	
			All	7	7	52	627.04	"	
L-9975	March 23, 1940	Bradshaw Land & Livestock Co.	All	13	8	51	640.00	Custer	Cancelled April 15, 1942 - new lease issued
			Part east of river	23	"	"	347.16	"	
			All	25	"	"	640.00		
L-9976	March 23, 1940	Bradshaw Land & Livestock Co.	All	31	8	52	630.96	Custer	Cancelled April 15, 1942 - new lease issued
L-10040	April 15, 1940	Bradshaw Land & Livestock Co.	All	17	7	52	640.00	Custer	Cancelled April 15, 1942 - new lease issued
L-10058	April 20, 1940	Bradshaw Land & Livestock Co.	S½	25	9	52	320.00	Custer	Cancelled May 8, 1941 account sale to lessee
			All	35	"	"	640.00	"	
L-10214	Dec. 15, 1940	Bradshaw Land & Livestock Co.	All	35	9	51	640.00	Custer	Cancelled April 15, 1942 - new lease issued
			All	5	7	52	635.60	"	
			All	15	9	52	640.00	Custer	Cancelled May 2, 1941 account sale to lessee
L-10339	April 24, 1941	Bradshaw Land & Livestock Co.	All	9	7	52	640.00	Custer	Cancelled April 15, 1942 - new lease issued
L-10596	April 14, 1942	A. W. Bradshaw	All	13	8	51	640.00	Custer	Pending
			Part east of river.	23	"	"	347.16	"	
			All	35	9	51	640.00	"	
L-10597	April 14, 1942	J. R. Bradshaw-A. W. Bradshaw executor	All	5	7	52	635.60	Custer	Cancelled Oct. 1, 1943 account sale to lessee
			All	9	"	"	640.00	"	
			All	31	8	52	630.96	"	
			All	25	8	51	640.00	Custer	Pending
			All	17	7	52	640.00	"	

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[fol. 194]

Grazing Leases Issued to W. R. Woodson

Year	Acres
1931	640.00
1932	640.00
1933	1,280.00
1934	3,161.68
1935	2,848.05
1936	5,549.79
1937	6,218.43
1938	1,308.64
1939	1,950.00
1940	668.64
1941	1,308.64
1942	1,948.64

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GRAZING LEASES ISSUED TO W. R. WOODSON, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-2703	July 8, 1915	Warren R. Woodson	All	27	15	44	640.00	Garfield	Cancelled March 1916 account sale to other party
L-3279	May 9, 1918	Warren R. Woodson	All	19	15	44	646.24	Garfield	Cancelled Jan. 7, 1930 account sale to lessee
L-7078	Sept. 17, 1931	W. R. Woodson Assgd. 9/27/34 to Crow Rock Corp.	All	21	14	44	640.00	Garfield	Cancelled Dec. 19, 1934 account sale to lessee
L-7673	Oct. 28, 1933	W. R. Woodson Assgd. 6/22/37 to Crow Rock Corp.	All	35	13	44	640.00	Rosebud	Cancelled Nov. 3, 1937 account sale to lessee
L-7852	March 21, 1934	W. R. Woodson	All less school site	5	12	45	603.60	Custer	Cancelled Sept. 4, 1937 account default in rental
L-7903	April 14, 1934	W. R. Woodson	All	17	13	46	640.00	Prairie	Cancelled Feb. 25, 1935 at request of lessee
			All	19	"	"	638.08	"	
L-8629	Oct. 28, 1936	W. R. Woodson	S½	7	13	44	326.37	Garfield	Cancelled March 4, 1937 account default in rental
L-8697	Jan. 3, 1936	W. R. Woodson	All	27	12	45	640.00	Custer	Cancelled Jan. 22, 1938 at request of lessee
L-8744	Feb. 10, 1936	W. R. Woodson	All	15	11	45	640.00	Custer	Assigned March 17, 1937 to R. P. Findleter
			All less highway	17	"	"	636.36	"	
			N½	21	"	"	320.00	"	
			All less highway	29	"	"	636.36	"	
			NW¼, S½	33	"	"	468.20	"	
L-8986	Aug. 24, 1936	W. R. Woodson	All less highway	5	11	45	638.90	Custer	Cancelled Feb. 3, 1937 - term expired
L-9269	July 15, 1937	W. R. Woodson	All	7	4	45	668.64	Custer	Cancelled May 26, 1942 account sale to lessee
L-9765	July 1, 1939	W. R. Woodson	All	5	3	45	641.36	Custer	Cancelled Nov 3, 1939 at request of lessee
			All	33	4	45	640.00	"	
L-10479	Sept. 22, 1941	W. R. Woodson	All	9	3	45	640.00	Custer	Assigned March 17, 1942 to T. B. Van Horn
L-10578	March 20, 1942	W. R. Woodson	All	17	4	45	640.00	Custer	Cancelled May 26, 1942 account sale to lessee

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Grazing Leases Issued to M. C. Simpson

Year	Acres
1939	1,280.00
1940	1,280.00
1941	1,280.00
1942	1,280.00
1943	1,280.00
1944	1,280.00
1945	640.00
1946	640.00
1947	640.00
1948	640.00
1949	640.00
1950	640.00
1951	640.00

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GRAZING LEASES ISSUED TO M. C. SIMPSON, VOLBORG, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-9650	Jan. 24, 1939	Milton C. Simpson	All	15	1	49	640.00	Powder River	Pending
L-9894	Dec. 14, 1939	Milton C. Simpson	All	23	1	49	640.00	Powder River	Cancelled Nov. 28, 1944 account sale to lessee

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Grazing Leases Issued to George M. Williamson

Year	Acres
1942	3,819.64
1943	3,819.64
1944	3,819.64
1945	1,259.64
1946	634.92
1947	634.92
1948	634.92
1949	634.92
1950	634.92
1951	634.92

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GRAZING LEASES ISSUED TO GEORGE M. WILLIAMSON, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-2747	Oct. 14, 1915	George M.Williamson	All	13	13	44	640.00	Garfield	Cancelled Feb. 1916 account sale to other party
L-9723	Apr. 22, 1939	A. G. Williamson	All less Roadway	9	15	33	634.92	Garfield	Pending
		Assgd. June 18,1942 to George M.Williamson	All	21	"	"	640.00	"	Cancelled Dec. 27, 1944 account sale to other party
			All	23	"	"	640.00	"	Cancelled Oct. 31, 1944 account sale to other party
			All	27	"	"	640.00	"	
			All	33	"	"	640.00	"	
			All	31	"	"	624.72	"	Cancelled March 27, 1945 account sale to lessee

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Grazing Leases Issued to Wallace Ulmer

Year	Acres
1933	4,473.68
1934	9,547.04
1935	9,547.04
1936	6,350.88
1937	8,877.08
1938	8,237.08
1939	8,237.08
1940	6,328.44
1941	6,328.44
1942	6,328.44
1943	6,328.44
1944	6,957.36
1945	5,677.36
1946	5,677.36

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GRAZING LEASES ISSUED TO WALLACE ULMER, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-7714	Dec. 5, 1933	Wallace Ulmer	All	23	13	41	636.40	Garfield	Cancelled April 19, 1939 at request of lessee
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	Rosebud	
	April 5, 1934		All	5	12	42	632.44	"	
			All	7	"	"	599.92	"	
			All	31	13	42	642.12	"	
L-7720	Dec. 21, 1933	Wallace Ulmer	All	3	11	38	637.28	Rosebud	Cancelled Jan. 29, 1935 account default in rental
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
	Feb. 27, 1934		All	35	12	38	640.00	"	
L-7971	May 10, 1934	Wallace Ulmer	All	33	13	41	640.00	Rosebud	Cancelled June 1, 1936 at request of lessee
L-8157	Sept. 12, 1934	Wallace Ulmer	All	1	18	43	638.88	Garfield	Cancelled Jan. 29, 1935 at request of lessee
			All	35	19	43	640.00	McCone	
L-8221	Nov. 21, 1934	Wallace Ulmer	All	9	12	42	640.00	Rosebud	Cancelled Aug. 25, 1938 at request of lessee
L-8984	Aug. 12, 1936	Wallace Ulmer	All	29	13	41	640.00	Garfield	Cancelled Feb. 8, 1937-term expired-not renewed by lessee
L-9160	April 7, 1937	Wallace Ulmer	All	1	10	40	639.80	Rosebud	Cancelled April 19, 1939 and new lease issued for part
			All	11	"	"	640.00	"	
			All	7	10	41	623.60	"	
			All	17	"	"	640.00	"	
L-9315	Sept. 14, 1937	Wallace Ulmer	All	19	11	41	622.80	Rosebud	Cancelled July 29, 1943 account sale to other party
L-9716	Aug. 1, 1938	Wallace Ulmer	All	11	10	40	640.00	Rosebud	Cancelled July 29, 1943 account sale to other party
			All	7	10	41	623.60	"	
			All	17	"	"	640.00	"	
			All	25	13	41	640.00	Garfield	Cancelled April 12, 1944 account leased to other party
			All	27	"	"	640.00	"	
			All	35	13	41	640.00	Rosebud	Cancelled Nov. 15, 1946 account sale to lessee
			All	7	12	42	599.92	"	
			All	31	13	42	642.12	"	
L-11024	March 6, 1944	Wallace Ulmer	All	5	12	42	632.44	Rosebud	Cancelled Nov. 15, 1946 account sale to lessee
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	602.88	"	
			All	21	"	"	640.00	"	

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Grazing Leases Issued to C. A. Mallett

Year	Acres
1947	6,722.83
1948	18,529.20
1949	18,529.20
1950	9,290.90
1951	9,290.90

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GRAZING LEASES ISSUED TO C. A. MALLETT, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-4796	Apr. 8, 1925	C. A. Mallett	All	5	14	52	640.40	Dawson	Cancelled June 9, 1927 account sale to lessee; sale subsequently cancelled and land resold to other party.
L-6161	May 10, 1928	S. E. Heren and Charles Mallett	All	9	4	52	640.00	Custer	Cancelled Feb. 9, 1931 account lessees not interested in continuing.
			Lots 7, 8, 9	3	5	52	69.72	"	
			All	9	"	"	640.00	"	
			Lots 2, 5, 6	11	"	"	50.68	"	
L-6373	July 2, 1929	S. E. Heren and Charles Mallett	All	5	5	52	641.80	Custer	Cancelled March 24, 1931 account lessees not interested in continuing.
			Lots 2,5,6,7, $SW\frac{1}{4}SW\frac{1}{4}$	33	6	52	149.57	"	
L-6468	Nov. 8, 1929	S. E. Heren and Charles Mallett	All	5	4	52	802.85	Custer	Cancelled Feb. 9, 1931 account lessees not interested in continuing.
			All	17	5	52	640.00	"	
			All	29	"	"	640.00	"	
L-9520	June 23, 1938	J. H. Drake Assgd. 12/15/47 to C. A. Mallett	Lot 2, $N\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}$	15	2	54	314.55	Custer	Pending
			Lot 4	9	"	"	26.64	"	
L-9781	June 21, 1939	Scott E. Hammond Assgd. 12/15/47 to C. A. Mallett	All	29	2	55	640.00	Carter	Cancelled Oct. 20, 1949 account sale to lessee.
L-10404	May 29, 1941	Scott E. Hammond Assgd. 12/15/47 to C. A. Mallett	All	19	2	55	331.16	Carter	Cancelled Oct. 20, 1949 account sale to lessee.
L-10498	Oct. 10, 1941	John McNierney and Charles Wiley Assgd. 12/15/47 to C. A. Mallett	All	13	2	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee.
			$E\frac{1}{2}$, $NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$	23	"	"	600.00	"	
L-10705	June 26, 1942	John McNierney Assgd. 12/15/47 to C. A. Mallett	All	9	3	55	640.00	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	21	"	"	640.00	"	
L-10706	June 25, 1942	John McNierney Assgd. 12/15/47 to C. A. Mallett	$W\frac{1}{2}$	33	4	55	320.00	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
L-11175	March 29, 1945	John McNierney Assgd. 12/15/47 to C. A. Mallett	$E\frac{1}{2}$	3	2	54	321.12	Custer	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	17	3	54	640.00	Carter	" " "
			All	11	3	55	640.00	Custer	Cancelled Oct. 26, 1949 account sale to other party
			All	19	"	"	329.36	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
L-11246	Nov. 1, 1945	John McNierney Assgd. 12/15/47 to C. A. Mallett	All	25	2	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee.
L-11290	Apr. 1, 1946	Paul Henderson Assgd. in 1948 to C. A. Mallett	All	1	1	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee
			Lots 1,3,4,5,8, $NE\frac{1}{4}SW\frac{1}{4}$	3	"	"	150.23	"	
			$NE\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}N\frac{1}{2}$, $S\frac{1}{2}$	11	"	"	560.00	"	
			All	13	"	"	640.00	"	
			$NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$	15	"	"	400.00	"	
			Lots 1,5,8, $E\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$	27	2	54	211.05	"	
			All	35	"	"	640.00	"	
			All	7	1	55	337.56	Carter	
			All	9	"	"	640.00	"	
			All	17	"	"	640.00	"	
			Lots 1,2, $E\frac{1}{2}E\frac{1}{2}$	19	"	"	248.30	"	
			All	33	2	55	640.00	"	
L-11425	July 7, 1948	C. A. Mallett	All	11	2	54	648.48	Custer	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	5	3	55	686.24	Carter	
			All	7	"	"	326.96	"	
			All	15	"	"	640.00	"	
			All	29	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	31	4	55	623.00	"	
			All	9	3	54	640.00	Custer	Cancelled Oct. 26, 1949 account sale to other party.
			All	15	"	"	640.00	"	
			All	17	"	"	574.55	"	

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Grazing Leases Issued to Mrs. Susan Haughian

Year	Acres
1933	1,256.60
1934	1,256.60
1935	1,896.60
1936	1,256.60
1937	1,256.60
1938	1,256.60
1939	2,536.60
1940	2,536.60
1941	1,336.60
1942	2,615.60
1943	2,615.60
1944	2,615.60
1945	8,371.92
1946	8,371.92
1947	8,371.92
1948	8,371.92
1949	8,371.92
1950	8,371.92
1951	8,371.92

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GRAZING LEASES ISSUED TO MRS. SUSAN HAUGHIAN, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-4660	Oct. 26, 1924	Susan Haughian	All less 30 ac.	1	13	46	609.68	Prairie	Cancelled Dec. 2, 1926 account default in rental.
L-4947	Aug. 3, 1925	J. W. Scriven Assgd. 3/15/27 to Dan Haughian Assgd. to Susan Haughian	All	7	12	47	626.24	Custer	Grazing & cultivation lease cancelled Apr. 25, 1932 and Grazing Lease No. 7213 issued.
L-5267	May 1, 1926	Richard Scriven Assgd. 8/1/28 to Daniel Haughian	All	1	12	46	616.60	Custer	Cancelled Jan. 10, 1934 and Lease No. 7725 issued.
L-5498	Jan. 8, 1927	Dan Haughian	All less school site	36	13	46	639.00	Custer	Cancelled April 14, 1932 account default in rental.
L-5918	April 2, 1928	Daniel Haughian	All	5	12	47	644.76	Custer	Cancelled May 16, 1932 account default in rental.
			All	7	12	48	618.28	"	
L-6085	Oct. 13, 1928	Dan Haughian	All	27	13	46	640.00	Custer	Cancelled Jan. 10, 1934 and Lease No. 7726 issued.
L-6142	Dec. 20, 1928	Dan Haughian	All	21	12	47	640.00	Custer	Cancelled Aug. 3, 1933 account default in rental.
L-6678	June 4, 1930	Dan Haughian	All	9	12	47	640.00	Custer	Cancelled June 9, 1932 account default in rental.
L-7213	April 26, 1932	Susan Haughian	All	7	12	47	626.24	Custer	Grazing & Cultivation lease cancelled Dec. 11, 1933
L-7725	Nov. 1, 1933	Susan Haughian	All	1	12	46	616.60	Custer	Pending
	April 26, 1935	" "	All	9	12	47	640.00	"	Cancelled June 3, 1940--Section leased to other party.
L-7726	Oct. 13, 1933	Susan Haughian	All	27	13	46	640.00	Custer	Cancelled May 16, 1935 account default in rental.
L-8156	July 19, 1934	Susan Haughian	All	9	17	42	640.00	Garfield	Surrendered - not executed.
L-2955N	Nov. 13, 1941	Susan Haughian	$NW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$	26	13	46	80.00	Custer	Pending.
L-9546	July 6, 1938	John Schott	All	25	13	46	640.00	Custer	Pending.
	May 1, 1942	Assgd. 3/11/42 to Susan Haughian	All less 1 ac. tract	35	"	"	639.00	"	
L-9857	Oct. 5, 1939	Susan Haughian	All	13	12	48	640.00	Custer	Cancelled July 23, 1940--Sections leased to other party.
			All	25	"	"	640.00	"	
L-10514	Nov. 13, 1941	Susan Haughian	All	27	13	46	640.00	Custer	Pending
L-11186	May 7, 1945	Susan Haughian and Sons	All	1	12	47	641.20	Custer	Pending
			All	3	"	"	644.12	"	
			All	5	"	"	644.76	"	
			All	7	"	"	626.24	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	

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Grazing Leases Issued to Madison Valley Stock Ass'n

Year	Acres
1933	37,486.85
1934	37,486.85
1935	36,846.53
1936	36,846.53
1937	36,846.53
1938	36,846.53
1939	26,592.71
1940	49,727.75
1941	49,728.64
1942	49,728.64
1943	49,728.64
1944	49,728.64
1945	49,728.64
1946	49,728.64
1947	48,467.72
1948	48,467.72
1949	48,467.72
1950	48,467.72
1951	48,467.72

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GRAZING LEASES ISSUED TO MADISON VALLEY STOCK ASSOCIATION OR TO W. A. DENECKE

Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-7518	Feb. 1, 1933	Madison Valley Stock Association W.A.Denecke, Pres.	S½	25	8	3	320.00	Gallatin	Cancelled May 20, 1938 account sale to other party.
			All	1	8	4	638.60	"	
			All	3	"	"	638.60	"	
			SE¼	5	"	"	160.00	"	
			All	9	"	"	642.48	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	615.23	"	
			All	17	"	"	640.00	"	
			All	21	"	"	639.30	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			E½NE¼, NW¼NE¼, NE¼NW¼, S½NW¼, SW¼, NE¼SE¼	27	"	"	440.00	"	
			N½	29	"	"	320.00	"	
			N½, E½SE¼	35	"	"	400.00	"	
			NE¼, E½NW¼, SW¼NW¼, S½	21	7	4	593.82	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	316.02	"	
			All	35	"	"	649.77	"	
			NW¼SW¼	9	7	4	40.00	"	Cancelled July 7, 1938 account sale to other party.
			All	1	9	2	640.20	Madison	Cancelled June 24, 1940 - new lease issued.
			All	11	"	"	640.00	"	
			All	1	8	2	640.32	"	
			All	3	"	"	640.64	"	
			All	5	"	"	640.72	"	
			All	7	"	"	620.20	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	624.00	"	
			All	21	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	320.00	"	
			All	35	"	"	640.00	"	
			All	1	9	3	642.24	Gallatin	
			All	3	"	"	642.60	"	
			All	5	"	"	639.00	Madison	
			All	7	"	"	628.28	"	
			All	9	"	"	640.00	Gallatin	
			All	17	"	"	640.00	Madison	
			All	21	"	"	640.00	Gallatin	
			All	27	"	"	640.00	"	
			All	31	"	"	634.68	Madison	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	7	8	3	623.76	Madison	
			All	17	"	"	640.00	"	
			All	19	"	"	626.88	"	
			S½	27	"	"	320.00	Gallatin	
			NW¼, S½	29	"	"	480.00	Madison	
			All	31	"	"	624.76	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			SW¼	3	7	4	160.00	"	
			E½	9	"	"	319.11	"	
			SW¼	13	"	"	160.00	"	
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	624.08	"	

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Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-10137	Feb. 1, 1940	Madison Valley Stock Association	All	5	8	2	640.72	Madison	Cancelled March 29, 1946 account sale to other party.
			All	7	"	"	620.20	"	
			All	1	9	2	640.20	Madison	Pending
			All	11	"	"	640.00	"	
			All	1	8	2	640.32	"	
			All	3	"	"	640.64	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	624.00	"	
			All	21	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	320.00	"	
			All	35	"	"	640.00	"	
			All	1	7	2	665.00	"	
			All	3	"	"	663.28	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			E½	17	"	"	320.00	"	
			E½	21	"	"	320.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			N½, E½SW¼, SE¼	27	"	"	560.00	"	
			N½	35	"	"	320.00	"	
			All	1	9	3	642.24	Gallatin	
			All	3	"	"	642.60	"	
			All	5	"	"	639.00	Madison	
			All	7	"	"	628.28	"	
			All	9	"	"	640.00	Gallatin	
			All	17	"	"	640.00	Madison	
			All	21	"	"	640.00	Gallatin	
			All	27	"	"	640.00	"	
			All	31	"	"	634.68	Madison	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	1	8	3	640.60	"	
			All	3	"	"	639.80	"	
			All	5	"	"	639.92	Madison	
			All	7	"	"	623.76	"	
			All	9	"	"	640.00	Gallatin	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	Madison	
			All	19	"	"	626.88	"	
			All	21	"	"	640.00	Gallatin	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	Madison	
			All	31	"	"	624.76	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	3	7	3	662.16	"	
			All	5	"	"	665.64	Madison	
			All	7	"	"	619.40	"	
			All	9	"	"	640.00	Gallatin	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	Madison	
			All	19	"	"	622.36	"	
			All	21	"	"	640.00	Gallatin	

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Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-10137 (cont)			All	23	7	3	640.00	Gallatin	Pending
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	Madison	
			All	31	"	"	621.28	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			SW¼	3	7	4	160.00	"	
			E½	9	"	"	320.00	"	
			SW¼	13	"	"	160.00	"	
			All	15	"	"	640.00	"	
			All	19	"	"	615.60	"	
			All	23	"	"	640.00	"	
			All	25	"	"	624.08	"	
L-7076	Sept. 11, 1931	The Rambouillet Co. W.A.Denecke, Mgr.	All	19	2	7	614.33	Gallatin	Cancelled March 4, 1933 at request of lessee.
L-7517	Feb. 1, 1933	W. A. Denecke	All	19	8	1	640.32	Madison	Cancelled Feb. 1, 1934 at request of lessee.
					S	W			
			All	27	7	1	629.85	Madison	Pending
			All	35	"	"	631.39	"	

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Grazing Leases Issued to George Davidson

Year	Acres
1922	10,216.32
1923	17,228.72
1924	17,228.72
1925	17,228.72
1926	13,404.16
1927	13,404.16
1928	13,404.16
1929	13,404.16
1930	17,235.12
1931	17,235.12
1932	15,325.08
1933	12,130.48
1934	16,614.16
1935	22,993.00
1936	25,536.44
1937	26,172.36
1938	21,705.08
1939	21,394.28
1940	24,576.28
1941	27,910.13
1942	30,781.92
1943	26,939.96
1944	26,939.96
1945	28,204.36
1946	10,199.57
1947	10,199.57
1948	10,839.57
1949	10,839.57
1950	10,839.57
1951	10,839.57

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GRAZING LEASES ISSUED TO GEORGE DAVIDSON, ROSEBUD, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-2149	Nov. 8, 1912	George Davidson	All	35	1	39	640.00	Rosebud	Cancelled Jan. 16, 1914 at request of lessee.
			All	3	2	39	640.00	Rosebud	Cancelled Dec. 1920 - new lease issued to other party.
			All	5	"	"	640.00	Big Horn	
L-2892	Aug. 1, 1916	George Davidson	All	33	1 S	39 E	640.00	Big Horn	Cancelled Aug. 1920 - new lease issued to other party.
L-4018	Jan. 18, 1922	George Davidson & E. C. Bearss	All	1	14 N	39 E	639.84	Garfield	Cancelled Sept. 18, 1939 - new lease issued to George Davidson
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	Cancelled Jan. 18, 1933 at request of lessee.
			All	15	"	"	640.00	"	
			All	21	"	"	640.00	"	Cancelled July 26, 1926 at request of lessee.
	Feb. 7, 1923		All	23	"	"	640.00	"	Cancelled Jan. 18, 1933 at request of lessee.
			All	25	"	"	640.00	"	Cancelled April 26, 1932 at request of lessee.
L-4067	May 9, 1922	George Davidson & E. C. Bearss	All	5	14	40	640.92	Garfield	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
			All	7	"	"	629.20	"	
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	19	"	"	632.24	"	Cancelled May 9, 1933 at request of lessee.
			All	29	"	"	640.00	"	Cancelled April 26, 1932 at request of lessee.
			All	31	"	"	634.12	"	
			All	33	"	"	640.00	"	
L-4279	May 16, 1923	Bearss & Davidson	All	13	15	39	640.00	Garfield	Cancelled April 14, 1925 at request of lessee.
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	19	15	40	624.56	"	
			All	35	15	39	640.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
			All	31	15	40	627.84	"	
L-4284	May 21, 1923	Bearss & Davidson	E½	33	15	40	320.00	Garfield	Cancelled April 16, 1938 at request of lessee.
			W½	33	"	"	320.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
L-5542 (Shearing Pen)	March 3, 1927	Charles Coil and George Davidson	All	13	15	40	640.00	Garfield	Cancelled July 23, 1931 - surrendered by lessees.
	May 24, 1930		All	11	"	"	630.04	"	
			All	15	"	"	640.00	"	
L-5692	April 1, 1927	James R. McGowan Assgd. 4/21/30 to George Davidson	All	1	15	40	640.44	Garfield	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	3	"	"	640.48	"	Cancelled April 26, 1932 - Restored March 9, 1934 - cancelled March 29, 1938 at request of lessee.
	March 9, 1934		All	13	14	40	640.00	"	Cancelled May 15, 1934 at request of lessee.
			All	29	"	"	640.00	"	Cancelled Jan. 8, 1936 at request of lessee.
			All	35	"	"	640.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
	May 4, 1934		All	25	"	"	640.00	"	Cancelled Aug. 25, 1937 at request of lessee.
	May 15, 1934		All	7	13	41	635.44	"	Cancelled Jan. 8, 1936 at request of lessee.

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Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-8043	June 12, 1934	George Davidson	All	15	14	39	640.00	Garfield	Cancelled June 28, 1935 at request of lessee.
L-8154	Aug. 9, 1934	George Davidson	All	13	14	40	640.00	Garfield	Cancelled Aug. 27, 1937 at request of lessee.
			All	25	"	"	640.00	"	Cancelled Jan. 8, 1936 at request of lessee.
L-8173	Oct. 3, 1934	George Davidson	All	17	14	41	640.00	Garfield	Cancelled Dec. 13, 1934 - term expired.
			All	21	"	"	640.00	"	
			All	29	"	"	640.00	"	
L-8365	March 26, 1935	George Davidson	All	15	14	39	640.00	Garfield	Cancelled Sept. 18, 1939 - new lease issued.
L-8594	Oct. 7, 1935	George Davidson	All	3	5	42	626.00	Rosebud	Cancelled March 2, 1936 - term expired.
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	23	"	"	640.68	"	
			All	25	"	"	628.28	"	
			All	3	4	43	643.88	"	
			All	5	"	"	642.36	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	636.36	"	
			All	19	5	43	641.04	"	
			All	31	"	"	640.24	"	
L-8932	June 26, 1936	George Davidson	All	19	14	40	632.24	Garfield	Cancelled March 30, 1938 at request of lessee.
L-8962	July 27, 1936	George Davidson	All	15	14	39	640.00	Garfield	Cancelled Feb. 8, 1937 - term expired.
L-8994	Aug. 27, 1936	George Davidson	All	25	14	40	640.00	Garfield	Cancelled Feb. 8, 1937 - term expired.
			All	7	13	41	635.44	"	
			All	17	"	"	640.00	"	
			All	19	"	"	639.36	"	
			All	31	14	41	631.84	"	
L-9090	Feb. 10, 1937	George Davidson	All	1	7	41	640.80	Rosebud	Cancelled Oct. 9, 1941 - with consent of lessee.
			All	35	8	41	640.00	"	
			All	1	"	"	624.68	"	Cancelled June 29, 1940 account sale to other party.
			All	23	9	41	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	11	8	41	640.00	"	Cancelled April 1, 1949 account sale to other party.
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	5	7	42	631.64	"	
			All	3	9	41	638.84	"	Cancelled Nov. 23, 1945 with consent of lessee.
			All	11	"	"	640.00	"	
			All	15	7	42	640.00	"	Cancelled March 19, 1941 account sale to other party.
	June 29, 1940		All	3	8	41	622.00	Rosebud	Cancelled April 1, 1949 account sale to other party.
			All	33	9	41	640.00	"	
			All	9	"	"	640.00	"	Cancelled Nov. 23, 1945 with consent of lessee.
			All	21	"	"	640.00	"	
	March 19, 1941		All	33	7	42	640.25	"	Cancelled April 1, 1949 account sale to other party.
L-9118	March 17, 1937	George Davidson	All	19	13	41	639.36	Garfield	Cancelled March 30, 1938 at request of lessee.
L-9788	July 5, 1939	George Davidson	All	13	5	42	640.00	Rosebud	Pending.
			All	19	5	43	641.04	"	
			All	31	"	"	640.24	"	Cancelled Jan. 1943 - new lease issued to Davidson.

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Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-9819	Jan. 1, 1939	George Davidson	W½	33	15	40	320.00	Garfield	Cancelled Jan. 1, 1945 at request of lessee.
			All	13	13	40	640.00	"	Cancelled Apr. 2, 1945 - new lease issued to Davidson.
			All	1	14	39	639.84	"	Assgd. Oct. 17, 1945 to Wm. Nefsy and T.W.Thompson.
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	35	15	39	640.00	"	
			All	1	13	40	640.44	"	
			All	11	"	"	640.00	"	
			All	5	14	40	640.92	"	
			All	7	"	"	629.20	"	
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	31	15	40	627.84	"	
L-10019	April 9, 1940	George Davidson	All	11	5	42	640.00	Rosebud	Pending
L-10309	April 5, 1941	George Davidson	All	15	13	40	640.00	Garfield	Cancelled Jan. 4, 1945 at request of lessee.
			All	5	"	"	636.68	"	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
			All	23	14	40	640.00	"	
L-2889N	April 5, 1941	George Davidson	SW¼NW¼, W½SW¼	10	14	40	120.00	Garfield	Assgd. Jan. 13, 1945 to Pete Mincoff.
L-10445	July 31, 1941	George Davidson	All	25	14	40	640.00	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
L-10517	Nov. 17, 1941	George Davidson	All	33	14	40	640.00	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
L-10537	Dec. 1, 1941	George Davidson	All	7	4	43	639.60	Rosebud	Cancelled Feb. 2, 1942 - new lease issued to Davidson.
			All	17	"	"	640.00	"	Cancelled April 23, 1942 at request of lessee.
			All	21	"	"	640.00	"	
L-10538	Jan. 5, 1942	George Davidson	All	5	4	43	642.36	Rosebud	Can celled Nov. 16, 1942 account sale to other party.
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	Cancelled April 21, 1942 at request of lessee.
	Feb. 17, 1942		All	7	"	"	639.60	"	Cancelled Nov. 16, 1942 account sale to other party.
	April 21, 1942		All	17	"	"	640.00	"	Cancelled Nov. 16, 1942 account sale to other party.
L-10594	April 1, 1942	George Davidson	All	3	13	40	640.48	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson
			All	9	"	"	640.00	"	
			All	19	14	40	632.24	"	
			All	21	13	40	640.00	"	Cancelled April 2, 1945 - new lease issued to Davidson.
L-2985N	April 1, 1942	George Davidson	Lot 1, SW¼NW¼	4	13	40	80.05	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
			Lots 1, 2, E½W½	30	14	40	256.86	"	
L-10811	Jan. 5, 1943	George Davidson	All	31	5	43	640.24	Rosebud	Pending.
L-11135	Jan. 4, 1945	Joseph Chiaberto Assgd. 4/13/48 to George Davidson	All	15	13	40	640.00	Garfield	Pending.
L-11156	Feb. 27, 1945	George Davidson	All	23	13	40	640.00	Garfield	Pending.
L-11177	April 12, 1945	George Davidson	All	1	12	40	634.40	Rosebud	Pending.
L-11178	April 1, 1945	George Davidson	All	13	13	40	640.00	Garfield	Pending.
			All	21	"	"	640.00	"	
L-11449	March 28, 1949	George Davidson	All	3	8	41	622.00	Rosebud	Pending.
			All	11	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	33	9	41	640.00	"	
			All	5	7	42	651.64	"	
			All	33	"	"	640.25	"	

[fol. 213]

Grazing Leases Issued to Frank Carey

Year	Acres
1935	7,993.84
1936	7,353.84
1937	9,724.62
1938	11,005.80
1939	11,005.80
1940	11,005.80
1941	3,851.20
1942	3,196.64
1943	3,196.64
1944	3,196.64
1945	3,196.64
1946	3,196.64
1947	3,196.64
1948	1,921.18
1949	1,921.18
1950	1,921.18
1951	1,921.18

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GRAZING LEASES ISSUED TO FRANK CAREY, BOULDER, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. W	Acres	County	Remarks
L-3393	Nov. 13, 1918	B.Frank Carey & Phillip Gillick	All	33	3	3	640.00	Jefferson	Cancelled April 1919 account sale to other party
L-3406	Nov. 26, 1918	Frank Carey and Phillip Gillick for Whitehall Stock Assn. Bull Mtn.Stock Assn.	All	5	3	3	664.00	Jefferson	Cancelled June 25, 1935 - new lease issued
			All	7	"	"	734.00	"	
			All	17	"	"	647.32	"	
			All	19	"	"	735.56	"	
			All	29	"	"	652.68	"	
			All	29	4	3	640.00	"	
			All	31	"	"	674.28	"	
			All	1	3	4	661.04	"	
			All	13	"	"	640.00	"	
			All	25	4	4	669.48	"	
			All	35	"	"	635.48	"	
L-3627	April 1, 1919	Frank Carey & Phillip Gillick for Whitehall Stock Assn.	All	17	4	3	643.10	Jefferson	Cancelled July 22, 1925 account default in rental
L-3637	June 23, 1919	Frank Carey & Phillip Gillick for Whitehall Stock Assn.	All	9	2	3	640.00	Jefferson	Cancelled Jan. 1920 - lease not executed by lessees
L-3669	May 25, 1921	Frank Carey for Whitehall Stock Assn.	All	9	2	3	640.00	Jefferson	Cancelled July 22, 1925 account default in rental
L-5785	Nov. 17, 1927	Frank Carey	All	9	2	3	640.00	Jefferson	Cancelled April 26, 1933 account default in rental
L-6234	Feb. 25, 1929	Frank Carey	All	13	3	3	640.00	Jefferson	Cancelled April 23, 1930 account default in rental
L-6873	Feb. 4, 1931	Frank Carey	All	33	3	3	640.00	Jefferson	Cancelled April 26, 1933 account default in rental
L-7140	Jan. 22, 1932	Frank Carey	All	5	4	2	556.95	Jefferson	Cancelled April 26, 1933 account default in rental
			$NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$	17	5	2	200.00	"	
			All	19	"	"	654.56	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	"	
			All	31	"	"	680.16	"	
			All	33	"	"	652.56	"	
			All	35	"	"	645.74	"	
L-8303	March 12, 1936	Frank Carey	All	33	3	3	640.00	Jefferson	Pending
	March 28, 1938		All	1	3	3	641.18	"	Pending
			All	13	"	"	640.00	"	
L-8469	April 1, 1935	Frank Carey & Phillip Gillick and J.M.Crow,Trustees for Bull Mtn.Stock Assn.	All	29	4	3	640.00	Jefferson	Cancelled Aug. 27, 1935 account sale to lessee
			All	5	3	3	664.00	"	Cancelled May 6, 1940 - new lease to Bull Mtn.Stock Assn. L-10073
			All	7	"	"	734.00	"	
			All	17	"	"	647.32	"	
			All	19	"	"	735.56	"	
			All	29	"	"	652.68	"	
			All	31	4	3	674.28	"	
			All	1	3	4	661.04	"	
			All	13	"	"	640.00	"	
			All	25	4	4	669.48	"	
			All	35	"	"	635.48	"	
	July 20, 1937		Lots 1,2,3,4, $SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$	1	2	4	440.76	"	
L-9162	Feb. 19, 1937	Frank Carey	All	19	5	2	554.56	Jefferson	Cancelled Sept. 23, 1937 - term expired
L-9316	July 17, 1937	Frank Carey & Cary Quaintance	All	19	5	2	654.56	Jefferson	Frank Carey's interest assigned to Mike Quinn 1/29/48
			All	29	"	"	640.00	"	
			$N\frac{1}{2}$, $SW\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$	31	"	"	635.46	"	

[fol. 214]

[fol. 215]

Grazing Leases Issued to William Magelssen

Year	Acres
1939	4,461.52
1940	4,461.52
1941	7,012.94
1942	9,549.98
1943	9,549.98
1944	9,549.98
1945	9,549.98
1946	4,149.92
1947	5,700.84
1948	---
1949	---
1950	640.00
1951	960.00

(p. 182 - fol. 216)

GRAZING LEASES ISSUED TO WILLIAM MAGELSSEN, BILLINGS, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-3394	Nov. 13, 1918	Smith Bros. Sheep Co. Assgd. 3/30/51 to Thomas M. Dines, William Farr and William Magelssen Assgd. 4/18/51 to 71 Ranch Co.	E½	33	6	9	320.00	Meagher	Pending.
L-6193	Feb. 12, 1929	E. W. Wayman Assgd. 2/20/47 to William Magelssen	All	19	10	35	625.28	Rosebud	Cancelled April 28, 1947 account sale to lessee.
L-9168	April 1, 1937	Knute Germo Assgd. 2/20/47 to William Magelssen	All	1	11	37	639.28	Rosebud	Cancelled April 24, 1947 account sale to lessee.
			All	3	"	"	637.60	"	
			All	25	12	37	640.00	"	
			All	35	"	"	640.00	"	
			All	7	11	38	619.44	"	
			All	17	"	"	640.00	"	
			All	31	12	38	619.24	"	
L-9720	March 30, 1939 March 20, 1942	William Magelssen	All	11	11	38	640.00	Rosebud	Cancelled in July 1945 account sale to lessee.
			All	15	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	33	12	38	640.00	"	
			All	19	10	39	628.16	"	
			All	31	11	39	633.36	"	
L-10242	Feb. 10, 1941	William Magelssen	All less R/W	33	10	36	631.42	Rosebud	Cancelled in July & Nov. 1945 account sale to lessee.
			All	9	11	38	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
L-10592	April 1, 1942	William Magelssen	All	13	13	36	640.00	Garfield	Cancelled in June & Sept. 1946 account sale to lessee.
			All	25	"	"	638.80	Rosebud	
			All	7	10	37	618.24	"	
			All	31	13	37	640.00	"	
L-11154	Feb. 27, 1945	Albert Lang Assgd. 1/27/50 to William Magelssen	All	23	10	34	640.00	Rosebud	Pending
L-11202	June 5, 1945	J. K. Ford Assgd. 2/20/47 to William Magelssen	All	29	10	35	640.00	Rosebud	Cancelled April 28, 1947 account sale to lessee.
L-11277	March 22, 1946	William Magelssen	All	21	7	38	640.00	Rosebud	Cancelled Sept. 6, 1946 account sale to lessee.
			N½	23	"	"	320.00	"	
L-11283	April 6, 1946	William Magelssen	All	3	8	37	652.88	Rosebud	Cancelled July 1, 1946 account sale to lessee.

[fol. 216]

[fol. 217]

EXHIBIT "C" TO STIPULATION.

GRAZING LEASE INFORMATION FOR ANTI-TRUST SUIT

WASHINGTON AND OREGON

Lease No.	Date of Lease	Lessee & Address	Location of Lease (County)	Acres	Date of Canc.	Remarks
1727	Nov.22,1943	D.F.Lange,Palouse,Wn.	Franklin	13,305.32	Active	Lange acquired lease from J.R.Ayres by assignment dated 5/19/45.
792	July 1, 1915	V.O.McWhorter,Prosser,Wn.	Benton	9,610.99	7/18/32	Acquired from Geo.Prior & Sons by assignment 7/14/30
1292	Nov. 16, 1925	" "	"	9,773.29	12/14/39	Cancelled only to draw up lease in new company name. (same man)
1523	Oct. 23,1935	" "	Grant	9,539.40	10/23/36	Cancelled to comply with Taylor Grazing Act.
1590	Nov. 15,1937	" "	Benton	3,677.72	4/23/40	Cancelled at request of lessee.
1629	Nov. 1, 1939	" "	"	6,859.58	11/1/45	Taken by USA for Hanford Project.Supercedes GL 1292.
1664	Nov. 15,1940	" "	"	2,967.03	Assigned	Assigned to Arthur Bohoskey 3/9/46.
1753	Nov. 1, 1945	" "	"	885.40	11/30/49	Lands sold to lessee.
1046	July 1, 1919	Alex Dunnett,Yakima,Wn.	Kittitas	4,480.42	9/8/26	Lds sold to J. Neils Lbr.Co.
1275	May 22, 1925	" "	"	3,573.18	10/31/36	Lds sold to Cascade Lbr.Co.
1459	Jan.2, 1929	" "	"	5,064.05	Active	
1539	Apr.24,1936	Russell Brown,Vantage,Wn.	Stevens	3,712.71	1/27/49	Cancelled at request of lessee.
1701	Dec. 1,1942	" "	Benton	10,943.76	3/1/43	Taken by USA for Hanford Project.
1586	Aug.23,1937	A.D.Olson,Ellensburg,Wn.	Grant	11,459.40	1/25/40	Cancelled in favor of new lease to same party. GL 1630.
1630	Jan. 1, 1940	" "	Grant	11,459.40	Active	
1702	Dec.24,1942	" "	Grant	4,542.44	6/30/43	Lds taken by USA for Hanford Project.

[fol. 219] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

DECISION—June 25, 1956

By this action the government seeks to have certain contractual provisions contained in deeds and leases granted by defendants held illegal as contravening Section 1 of the Sherman Antitrust Act, 26 Stat. 209.[1] The action is authorized by Section 4 of the Act. Injunctive relief is sought to prevent enforcement of the contract provisions which defendants designate as "preferential routing agreements" and government counsel refer to as "traffic clauses." The terms of the clauses being the same under either designation, for brevity and convenience the latter term will be used herein.

The complaint was filed May 26, 1949. Since then, by answer, interrogatories, depositions and stipulation, many facts have been agreed to. The government moves for summary judgment under Rule 56(a)(c) on the undisputed facts. Discretion is not involved in considering the facts and the motion can only be granted to such extent as the law may warrant on facts shown in the record beyond genuine issue.

The material facts thus shown are: Defendant Northern Pacific Railway Company, a Wisconsin corporation (the NP herein), is the successor to a land grant railroad which [fol. 220] in 1864 was chartered by act of Congress for the

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[1] "Every contract, . . . in restraint of trade or commerce among the several States, . . . is hereby declared to be illegal. . . . "

purpose of constructing a railroad from Lake Superior to Puget Sound.[2] The NP is primarily engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. Defendant Northwestern Improvement Company, a Delaware corporation (the Land Company herein) and wholly owned subsidiary of the NP, conducts the business of selling, leasing and managing NP lands.

By congressional land grants the NP acquired slightly less than 39,500,000 acres of public land located, except for about 100,000 acres, in the area of the states in which the NP railway lines are now located, i.e., Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon.

Prior to the commencement of this action much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way, etc. classified by the Interstate Commerce Commission as for "transportation purposes." Some of the presently owned land was not acquired under the grants of public land. Approximately 21,000,000 acres of land were sold without reservation of any kind. Of the acreage sold with mineral reservations, 6,500,000 acres remain subject to such reservation.

The lands now owned by the defendants, as well as lands which they formerly owned and sold, are of many types. Some contain timber, iron ore, coal, oil and other natural resources. Some of the lands have been used for grazing and agriculture, while still others have been devoted to industrial developments of various kinds.

Traffic clauses in a variety of forms have been included [fol. 221] in some of defendants' deeds and in almost all of the leases of lands in each of the categories referred to. The minimal obligation of all of the clauses in question requires the grantee or lessee to route via NP railway shipments of commodities produced by or on the land sold or leased, provided neither a lower rate nor better service

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[2] For summary of the history of the NP land grants see *United States* v. *Northern Pacific Railway Co., et al,* 256 U.S. 51 and *United States* v. *Northern Pacific Railway Co., et al,* 311 U.S. 317.

be available from a competing line. Typical examples of defendants' traffic clauses are given below.[3]

The government contends that under the stated facts, shown in the record without genuine dispute, the traffic clauses provide for restraints of trade which are unreasonable *per se* and therefore violative of Section 1 of the Sher- [fol. 222] man Act under principles announced in the "tying" cases.[4] The essence of the contention is that defend-

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[3] A grazing lease: "All shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines."

A lease of coal lands: "The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line."

A timber contract or a contract for the sale of timberland: "The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports."

[4] *Motion Picture Patents Co.* v. *Universal Film Mfg. Co., et al,* 243 U.S. 502 (1917); *McBoyle* v. *United States,* 283 U.S. 27 (1931); *International Business Machines Corp.* v. *United States,* 298 U.S. 131 (1936); *Leitch Mfg. Co.* v. *Barber Co.,* 302 U.S. 458 (1937); *Interstate Circuit Inc. et al* v. *United States,* 306 U.S. 208 (1939); *Ethyl Gasoline Corp. et al* v. *United States,* 309 U.S. 436 (1940); *Morton Salt Co.* v. *G. S. Suppiger Co.,* 314 U.S. 488 (1942); *B. B. Chemical Co.* v. *Ellis, et al,* 314 U.S. 495 (1942); *United States* v. *Masonite Corp., et al,* 316 U.S. 265 (1942); *Mercoid Corp.* v. *Mid-*

ants' dominance of NP land as a tying commodity or device has been used to foreclose or restrict competition in the tied commodity, transportation service to and from the land, the commerce in which is not "inconsequential or insubstantial" in amount.

Defendants contend that the rules of the tying cases are inapplicable to the facts of the instant case; that if so, neither the necessary dominance over the market in the tying commodity nor the required substantial volume of commerce in the tied commodity appears on the present record; and that defendants are entitled to present proof in support of their affirmative defenses alleging that in practice and effect the restraint of the traffic clauses is reasonable and beneficial.

Most, if not all, of the decisions of the United States Supreme Court in tying cases based on either Sherman Act or Clayton Act or both, are listed in footnote 4.
[fol. 223] Not any one of the cited cases is closely apposite in facts to the present case; but the facts of this case bring it squarely within a formula derived from all of the cited cases: When (1) a seller or lessor, enjoying market control of a particular commodity, in contracts for the sale or lease of such commodity, requires buyer or lessee to purchase a distinctly different and separate commodity, and (2) the amount of interstate commerce in the tied commodity is not insignificant or insubstantial, the tying arrangement is illegal *per se* under Section 1 of the Sherman Act.

The rationale of the tying doctrine is briefly stated in the latest of the decisions, *Times-Picayune Publishing Co.* v. *United States*; 345 U. S. 594 (1953):

Continent Investment Co., et al, 320 U.S. 661 (1944); *Mercoid Corp.* v. *Minneapolis Honeywell Regulator Co.*, 320 U.S. 680 (1944); *Hartford Empire Co.* v. *United States*, 323 U.S. 386 (1945); *Associated Press et al* v. *United States*, 326 U.S. 1 (1945); *International Salt Co.* v. *United States*, 332 U.S. 392 (1947); *United States* v. *Griffith et al*, 334 U.S. 100 (1948); *United States* v. *Paramount Pictures, Inc. et al*, 334 U.S. 131 (1948); *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953).

"Tying arrangements, we may readily agree, flout the Sherman Act's policy that competition rule the marts of trade. Basic to the faith that a free economy best promotes the public weal is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the Nation's resources and thus direct the course its economic development will take. Yet '[t]ying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California* v. *United States*, 337 U.S. 293, 305 (1949). By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market. But any intrinsic superiority of the 'tied' product would convince freely choosing buyers to select it over others, anyway. Thus '[i]n the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one.' Id., at 306. Conversely, the effect on competing sellers attempting to rival the 'tied' product is drastic: to the extent the enforcer of the tying arrangement enjoys market control, other existing or potential sellers are foreclosed from offering up their goods to a free competitive judgment; they are effectively excluded from the [fol. 224] marketplace.

"For that reason, tying agreements fare harshly under the laws forbidding restraints of trade. . . ." (p. 605-606)[5].

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[5] Existence of the necessary tying elements was not found in the *Times-Picayune* case. If in that case defendant newspaper publisher had required by contract provision the purchasers of advertising space to subscribe to defendant's papers, prices and service being equal to that of competing papers, with substantiality satisfied, the illegality *per se* of the requirement could hardly be doubted. The postulated situation is more analogous to the present case than the facts found in *Times-Picayune*.

The Supreme Court sustained summary judgments finding tying arrangements violations *per se* of the Sherman Act in *Associated Press et al* v. *United States*, 326 U.S. 1 (1945) and in *International Salt Co., Inc.* v. *United States*, 332 U.S. 392 (1947). Application of tying principles is not limited to cases involving monopolies granted by patent and copyright. *United States* v *Griffith et al*, 334 U.S. 100 (1948); *Times-Picayune* v. *U.S.*, supra. Specific intent to restrain trade or build monopoly is not necessary for a finding of antitrust law violation and "it is unreasonable *per se* to foreclose competitors from any substantial market." *U.S.* v. *Griffith*, supra; *International Salt Co., Inc.* v. *U.S.*, supra.

The traffic clauses in question prohibit grantees and lessees of NP lands from a free choice in the selection of transportation routing in the shipment of commodities to and from the lands sold or leased. Admittedly, a large, if not major, portion of such shipments are in interstate commerce. Obviously, the traffic clauses provide at least a nominal "restraint of trade or commerce among the several states." While the Sherman Act provides that "every" contract in such restraint is illegal, ever since *Standard Oil* v. *United States*, 221 U.S. 1 (1911), only unreasonable restraints are held condemned by the Act. Unreasonable restraints are those which tend to create monopoly by restricting consumers or purchasers from enjoyment of the advantages of free competition. *Standard Oil* v. *U.S.* supra; *U.S.* v. *American Tobacco Co.*, 221 U.S. 106 (1911). Among the restraints held to be unreasonable *per se* are those effecting price fixing, boycott and a tying arrangement in-
[fol. 225] volving the two elements previously stated.

Defendants argue that the first tying element, i.e., market domination over the tying product, is not established because the record does not show the proportion of NP lands of various types to the total of the lands of the same types sold and leased in the area of defendants' operations. This contention ignores the plain language of the cited decisions, providing that market dominance of "the tying commodity" is required. The tying commodity need only be the particular property or product to which forced purchase of

the second commodity is tied; certainly it does not necessarily include all of the similar and competing commodities which may be in the market. Restraints of trade to be illegal under Section 1 of the Sherman Act must necessarily *tend* to monopoly but need not fully or substantially achieve it. In *International Salt Co.* v. *U.S.*, supra, market dominance of defendant's particular salt dispenser was held sufficient to sustain the first element of an unreasonable restraint *per se*, even though other dispensers were available in the market. *Standard Oil Co. of Calif., et al* v. *United States*, 337 U.S. 293 (1949) affirms such view of the *International Salt Co.* decision in the following language: "It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition." Defendants urge that *U.S.* v. *E.I. DuPont de Nemours & Co.*, 351 U.S. 377, decided after argument of the present case, holds in effect that the market dominance required as the first element of an illegal tying device is synonymous with the monopoly that is a requisite for violation of paragraph 2 of the Sherman Act. *DuPont*, grounded solely on paragraph 2, was not concerned with a tying arrangement and neither the tying principles nor the decisions in which they have been developed are discussed in the opinion. As the majority opinion indicates and the concurring opinion states: "Sections 1 and 2 of course implicate different considerations." Nothing in the reasoning or language of the Supreme Court decisions re-[fol. 226] quires adoption of defendants' view of the market involved in the first element of the tying formula.

The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land.

Existence of the second of the tying elements is dependent on the amount of commerce in the tied commodity

with, at most, only remote regard to the total amount of commerce in commodities of a like or similar kind in the same market area. The record amply shows that actual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial, however that commerce may compare with the whole volume of commodity transportation in the area served by NP.[6] The admitted amount of commerce in transportation restrained by the traffic clauses in each of the categories in question is not inconsequential or insubstantial.

[fol. 227] The stipulation of the parties filed May 16, 1950 shows that of the approximate 8,000 industrial leases (including grain elevator and grain warehouse leases), with minor exceptions, all grant a use of right-of-way lands. Such lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity. Whether under such circumstances the industrial leases involve distinct and separate tied and tying commodites, as held required and found

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[6] By their Responses to Plaintiff's Request for Admissions under Rule 36, filed January 14, 1952, defendants admitted the existence of the following leases containing traffic clauses, all valid and subsisting as of 1949, the year in which suit was commenced:

(1) At least 1,000 leases involving more than 1,000,000 acres of grazing lands. (See Response to Request IV)

(2) At least 16 leases of iron ore land, covering 5,261 acres. (See Response to Request VII)

(3) At least 2 leases of coal lands. (See Response to Request VI)

(4) At least 19 oil and gas permits or leases, covering 135,000 acres of land. (See Response to Request V)

In addition, defendants admit the existence of the following contracts for the sale of timber or timberland subject to traffic clauses:

(1) Out of 75 contracts for the sale of timberland, involving over 2,000,000 acres of land and over 21,000,000,000 board feet of timber, at least 42 of such contracts were subject to traffic clauses. (See Response to Request I and Exhibit A)

(2) Out of 210 timber contracts, involving more than 390,000 acres of land and more than 6,000,000,000 board feet of timber, at least 157 of such contracts included traffic clauses. (See Response to Request II and Exhibit B)

lacking in *Times-Picayune* v. *U.S.*, supra,[7] presents at least a question of fact which precludes summary judgment and will require trial as to all issues pertaining to the industrial leases.

On the established facts all of the traffic clauses in question, excepting those in the industrial (including grain elevator and grain warehouse) leases, are shown to be violative of Section 1 of the Sherman Act under the principles enunciated in the tying cases. Findings and decree to such effect will be settled at a hearing for the purpose which may be noted at the convenience of counsel.

Dated this 23 day of June, 1956.

Geo. H. Boldt, United States District Judge

[fol. 228] [File endorsement omitted]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

MOTION FOR REARGUMENT AND RECONSIDERATION—Filed August 8, 1956

[Title omitted]

Come now defendants by their undersigned attorneys and move the court for reargument and reconsideration of plaintiff's Motion for Summary Judgment in the above entitled case on the ground that the following holding in the court's Memorandum Decision, dated June 23, 1956, to-wit:

> "The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute

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[7] "The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in economic harm to competition in the 'tied' market. . . . " *Times-Picayune* v. *U.S.*, *supra*.

> domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land."

is contrary to and in conflict with well-settled legal principles, including those recently restated and clarified in *United States of America* v. *E. I. du Pont de Nemours and Company*, decided by the Supreme Court of the United States on June 11, 1956.

This motion is based upon the pleadings, files and proceedings in the above entitled action.

M. L. Countryman, Jr., Dean H. Eastman, Harold G. Boggs, Attorneys for Defendants.

[fol. 229] IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO SUPPLEMENTAL RECORD ON APPEAL TO SUPREME COURT OF THE UNITED STATES

United States of America,
Western District of Washington, ss:

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 2 of Rule 12, revised, of the Supreme Court of the United States, and designation of counsel, and order of court pursuant to Sec. 4 of Rule 12 of said Supreme Court I am transmitting herewith, supplemental to and as a part of the record heretofore transmitted as the record on appeal herein, the following original papers in the file dealing with the action, to-wit:

153. Findings of Fact and Conclusions of Law, filed August 31, 1956.

154. Partial Final Judgment, filed August 31, 1956.

In Witness Whereof I have hereunto affixed the official seal of said District Court at Seattle and set my hand this 17th day of December, 1956.

[Seal]

Millard P. Thomas, Clerk, By Truman Egger, Chief Deputy.

[fol. 230] [Endorsement of Lodging omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

DEFENDANTS' PROPOSED PARTIAL FINAL JUDGMENT—
Lodged August 24, 1956

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Receipt is acknowledged of a copy. Margaret H. Brass, Attorney, Dept. of Justice.

August 24, 1956.

[fol. 231] IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

PARTIAL FINAL JUDGMENT—August 31, 1956

This matter having come on for a hearing before the Court upon a motion of the plaintiff for summary judg-

ment, counsel for the parties having been heard, and the Court having determined, upon consideration of the pleadings, admissions and stipulations on file, that there is no genuine issue between the parties as to any material fact with respect to all of the claims involved in this action other than claims based upon defendants' industrial leases (including grain elevator and grain warehouse leases), and the Court having filed its opinion herein on June 23, 1956, granting the motion for summary judgment with respect to all claims other than claims based on defendants' industrial leases, and it appearing to the Court that there is no just reason for delay in entering a final judgment in accordance with that decision on all of the multiple claims upon which summary judgment has been granted;

It Is Hereby Ordered, Adjudged and Decreed:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.

[fol. 232] 2. The defendants Northern Pacific Railway Company (Northern Pacific) and Northwestern Improvement Company (Northwestern) have entered into contracts in restraint of, and have used their ownership and control of land to restrain interstate trade and commerce in the transportation of products in violation of Section 1 of the Act of Congress approved July 2, 1890, as amended, commonly known as the Sherman Act, 15 U.S.C. §1.

3. Every condition, agreement or understanding contained in defendants' lease agreements (except industrial leases, grain elevator leases and grain warehouse leases) or in defendants' contracts for or relating to the sale of timberland or timber, that the lessee or purchaser shall ship products produced on the land, or on adjacent lands, or manufactured from products so produced, over the lines of defendant Northern Pacific or over the lines of a railroad to be designated by Northern Pacific or shall ship incoming freight over the lines of Northern Pacific, are hereby adjudged unlawful and declared null and void.

4. The defendants Northern Pacific and Northwestern, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with

said defendants who receive actual notice of this Final Judgment by personal service or otherwise are hereby perpetually enjoined:

(a) From enforcing or attempting to enforce any condition, agreement or understanding adjudged unlawful in [fol. 233] paragraph 3 hereof.

(b) From entering into any contract, agreement or lease (except industrial leases, including grain elevator and grain warehouse leases) containing provisions which are identical with or similar to those adjudged unlawful in paragraph 3 hereof, or from fixing a price or rental for the sale or lease of land upon the condition, agreement or understanding, directly or indirectly, that the purchaser, assignee, vendee, lessee, or sublessee shall ship products on or from the land, or commodities manufactured from such products, over the lines of Northern Pacific or the lines of any other carrier, or shall ship incoming freight over the lines of Northern Pacific.

(c) From making or carrying out contracts, agreements or understandings having the purpose or effect of continuing, reviving or renewing any contract provision adjudged to be unlawful by paragraph 3 of this Final Judgment.

(d) From requiring any purchaser or lessee of land (except a lessee under an industrial lease, grain elevator lease or grain warehouse lease) or purchaser of timber to make reports of the amount or nature of shipments made by such purchaser or lessee over the lines of Northern Pacific or any other carrier, or to keep records of such shipments, or to permit defendants to have access to any records kept of such shipments.

5. Within 60 days after the entry of this Final Judgment defendants shall, in writing, fairly advise each person [fol. 234] with whom they, or either of them, have a contract containing any condition, agreement or understanding adjudged to be illegal in paragraph 3 hereof of the substantive terms of this Final Judgment. Defendants shall file with the Court proof of compliance with this paragraph.

6. The defendants shall use all reasonable efforts to ascertain the identity of all purchasers or sublessees from

purchasers or lessees of Northern Pacific with whom defendants, or either of them, have or had a contract containing any condition, agreement or understanding adjudged illegal by paragraph 3 hereof, and within 120 days from the entry of this Final Judgment defendants shall serve written notice upon each of such purchasers or sublessees that the contracts are to that extent illegal, null, void and unenforceable. Defendants shall file with the Court proof of compliance with this paragraph.

7. For the purpose of securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of the Northern Pacific Railway Company and Northwestern Improvement Company, and subject to any legally recognized privilege, be permitted:

(a) Access during the office hours of said corporate defendants to all books, ledgers, accounts, correspondence, [fol. 235] memoranda, and other records and documents in the possession or under the control of said corporate defendants relating to any matters contained in this Final Judgment;

(b) Subject to the reasonable convenience of said corporate defendants and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Paragraph 7 shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

8. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment,

for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Let this partial final judgment be entered.

Done this 3 day of August, 1956.

Geo. H. Boldt, Judge.

[fol. 236] Presented by: Margaret H. Brass, Attorney, Department of Justice.

Approved as to form: Harold G. Boggs, of Counsel for Defendants.

[fol. 237] [Endorsement of Lodging omitted]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

Civil Action No. 2277

[Title omitted]

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Lodged August 13, 1956

Margaret H. Brass, Edward M. Feeney, Attorneys, Department of Justice.

Victor R. Hansen, Assistant Attorney General.

Victor H. Kramer, Attorney.

[fol. 238] IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
August 31, 1956

I. Description of Defendants

1. Defendant Northern Pacific Railway Company (Northern Pacific) is a Wisconsin corporation. It was formed in 1870 under the name of Superior and St. Croix Railroad Company. Northern Pacific is the successor to the Northern Pacific Railroad Company, which was chartered by a special act of Congress on July 2, 1864. In 1896 Northern Pacific acquired the properties of the Northern Pacific Railroad Company. Since that time Northern Pacific has engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. It is found and transacts business in this District. (Complaint, Par. 7; Par. 2; Answer, Par. 3, 1).

2. Defendant Northwestern Improvement Company (Northwestern) is a Delaware corporation and a wholly-owned subsidiary of Northern Pacific. In 1942 it became the successor in interest to a wholly-owned subsidiary of Northern Pacific, which was incorporated in New Jersey in 1897, under the name of Northwestern Improvement Company. Defendant Northwestern sells, leases and manages certain lands acquired from Northern Pacific. It is [fol. 239] found and transacts business in this District. (Complaint, Par. 8; Par. 2; Answer, Par. 3, 1).

II. Nature of Interstate Trade and Commerce Involved

3. The Northern Pacific Railroad Company, the predecessor of Northern Pacific (hereinafter referred to as the Railroad Company), was a land grant railroad, which was chartered by Congress in 1864 to construct a railroad from Lake Superior to Puget Sound with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made to the Railroad Company by the Act of Congress of July 2, 1864. This grant consisted of every alternate section of public land, not mineral, in the amount of twenty sections per mile through territories and ten sections per mile through states on each side of the railroad line to be erected between Lake Superior and Puget Sound. The Railroad Company was privileged to select in lieu of the granted lands which should be found to have been previously granted, sold or occupied, alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad Company was privileged to select land suitable for agricultural purposes, provided land so selected was located within fifty miles of the railroad line. (Complaint, Par. 9; Answer, Par. 4).

4. By an Act of Congress of May 31, 1870 the Railroad Company was authorized to construct the main line by way of the Columbia River to Puget Sound, and a branch across the Cascade Mountains to Puget Sound. By the Act of Congress of May 31, 1870, Congress made an additional grant of land to the Railroad Company in connection with the construction of the line between Portland, Oregon, [fol. 240] and Puget Sound. This grant was upon the same terms as the original grant made in 1864. The Acts of 1864 and 1870 also granted the Railroad Company a right-of-way over public lands of two hundred feet in width on each side of the definite location of the railroad line. (Complaint, Par. 10; Answer, Par. 4).

5. The Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls a total of 6,888.6 miles of railroad within the States of Wisconsin, Minnesota,

North Dakota, Montana, Idaho, Washington and Oregon. The lines of Northern Pacific are substantially paralleled by the later constructed lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. (Complaint, Par. 11; Answer, Par. 5).

6. Under the land grants made by Congress Northern Pacific recei ed 39,494,391 acres of land, of which all but approximately 100,000 acres was located in the states in which its lines now operate. (Complaint, Par. 12; Answer, Par. 6).

7. Prior to the commencement of this action, much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way purposes. This acreage includes, in addition to land acquired by the Acts of 1864 and 1870, some land acquired by purchase and under other land grant Acts. Approximately 21,000,000 acres of land have been sold by the defendants without reservation of any kind. Of the acreage sold with mineral reservations, over 6,500,000 acres remain subject to such reservation. (Complaint, Par. 12; Answer, Par. 6).

[fol. 241] 8. The lands now owned by the defendants as well as lands formerly owned and sold by them are of different types. Some contain timber, iron ore, coal, oil and gas or other natural resources. Some of the lands have been used for grazing and agriculture, while others have been used for the location of industrial sites of various kinds. (Complaint, Par. 12; Answer, Par. 6).

9. Defendants are and have been engaged in the sale of land and of standing timber and in the leasing of land with rights to remove timber, oil, gas, metals, clay, coal and other natural resources. Defendants are and have been engaged in the leasing of land for grazing purposes pending the sale thereof and for industrial sites. Many of these grazing lands have been under lease for many years. (Complaint, Par. 12; Answer, Par. 6).

10. Defendants customarily include in their lease agreements provisions which require the lessee to make ship-

ments over the lines of Northern Pacific, when reached via its lines and when service and rates are equal. These provisions, commonly known as traffic clauses or preferential routing agreements, have been included in almost all of the leases of land and in some of defendants' deeds of land and contracts relating to the sale of land and of timber. The minimal obligation of all of these traffic clauses requires the grantee or lessee to route over the lines of Northern Pacific shipments of commodities produced by or on the land sold or leased, provided that neither a lower rate nor better service be available from a competing line. A large portion of the shipments of products affected by the traffic clauses has been and is shipped in interstate commerce. (Complaint, Par. 13; Answer, Second Defense; Response and Supplemental Response to Request for Admissions; Stipulation re Sources of Fact Information and Related Matters, Par. 7).

[fol. 242] 11. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber, lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, metals, minerals, animals and animal products. A variety of manufactured products, machinery, foodstuffs, mining and lumbering equipment and supplies, is shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located. (Complaint, Par. 14; Answer, Par. 8).

12. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce, including many of the commodities produced or derived from or distributed through the use of lands now or formerly owned by defendants, and many products manufactured from such commodities. Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial [fol. 243] part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and

the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. (Complaint, Par. 15; Answer, Par. 9).

III. Use of Various Types of Traffic Clauses or Preferential Routing Agreements

A. Traffic Clauses Contained in Grazing Leases

13. Defendants' grazing leases contain a traffic clause providing in substance that the lessee shall ship over the lines of Northern Pacific all shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the lines of Northern Pacific or its connections, whenever its freight rates do not exceed the rates of other lines. (Answer, page 8).

14. In 1949 there were over 1,000 grazing leases containing such a traffic clause in effect, covering more than 1,000,000 acres of land. (Request for Admission IV; Response to Request for Admission IV).

B. Traffic Clauses Contained in Oil and Gas Leases

15. Defendants' usual form of oil and gas lease contains a traffic clause providing in substance that the lessee shall ship over such railroad line as Northern Pacific may designate all products obtained from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, or manufactures from said products insofar as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the leased premises are a part, provided that the rates and service of the designated line shall equal those of any competing line. (Answer, page 8).

16. Defendants' usual form of oil and gas lease also provides that all oil controlled by the lessee produced from the [fol. 244] leased premises and from other lands in the oil field of which the leased premises are a part, shall be delivered to a pipeline reaching the rails of Northern Pacific where such a pipeline is available and a price can be ob-

tained for oil so delivered which is at least equal to the price then obtainable for oil produced on the leased premises and delivered to any other pipeline. (Answer, page 8).

17. Defendants' usual form of oil and gas lease also provides that should the lessee decide to construct or cause others to construct a refinery to refine the oil from the field of which the leased premises are a part, the refinery shall be located at some point on Northern Pacific's lines, provided such construction is as economical and feasible as construction on the lines of any other railroad company, and all of the products of the refinery shall be shipped over the lines of Northern Pacific and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale. (Answer, page 8).

18. Defendants have granted 50 oil and gas leases which contained one or more of the above described traffic clauses. In 1949 there were at least 19 oil and gas leases containing traffic clauses in effect, covering 135,000 acres of land. (Request for Admission V; Response to Request for Admission V).

C. Traffic Clauses Contained in Leases of Coal Lands

19. Defendants' leases of coal lands generally contain a traffic clause providing that the lessee shall ship over Northern Pacific lines all coal removed from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, insofar as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the leased premises are a part, provided Northern Pacific's rates and service equal those of any competing line. (Answer, page 9).

20. A traffic clause has been contained in 111 of defend-
[fol. 245] ants' leases of coal lands. At least 12 coal leases containing a traffic clause were in effect in 1949. (Request for Admission VI and Appendix VI; Response to Request for Admission VI; Supplemental Response to Request for Admission VI).

D. Traffic Clauses Contained in Leases of Land for the Removal of Iron Ore

21. Defendant's leases of land for the removal of iron ore generally contain a traffic clause providing in substance that the lessee, his successors and assigns shall ship over such line as Northern Pacific may designate all iron ore mined and shipped from the leased premises, as well as all treated products and concentrates mined from the leased premises, provided that rates, service and facilities equal those of any competing line. (Answer, page 9).

22. Defendants have granted 30 iron ore leases containing traffic clauses covering substantially 6,461 acres of land. In 1949 there were at least 16 leases of iron ore land containing such traffic clauses in effect, covering 5,261 acres of land. (Request for Admission VII; Response to Request for Admission VII).

E. Traffic Clauses Contained in Mineral Land Leases

23. Defendants' leases of mineral land for removal of minerals other than coal or petroleum contain a traffic clause which in substance requires the lessees to ship the particular mineral involved over the lines of Northern Pacific if rates, and in some instances service or facilities of Northern Pacific are equal to those of other lines. Some of the mineral land traffic clauses require the lessee to ship over Northern Pacific's lines products manufactured from the mineral removed from the land or minerals removed from adjacent lands then or thereafter controlled by the lessee. A number of the mineral land leases provide that the traffic clause shall be binding upon the lessee's successors and assigns. (Request for Admission III; Response to Request for Admission III; Supplemental Response to Request for Admission III, Exhibit C, and Appendix, pp. 37-43).

[fol. 246] 24. Defendants have granted 63 leases of mineral land containing traffic clauses, covering 42,466 acres of land. In 1949 there were at least 17 mineral land leases containing traffic clauses in effect, covering 6,810 acres of land. (Request for Admission III; Supplemental Response to Request for Admission III and Exhibit C).

F. Traffic Clauses Contained in Deeds and Contracts Relating to the Sale of Timberland

25. Defendants' contracts relating to sales of timberlands have contained a traffic clause requiring in substance that, rates being equal, the grantees and in some instances successors and assigns shall ship over the lines of Northern Pacific all logs, poles, lumber and other products manufactured from timber cut from the lands, and in some instances from other lands in the vicinity which the purchaser at any time may control, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the sale. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if the expense to the purchaser is not increased over the cost of shipment over another rail line. In some instances, the purchaser has been required to offer to sell the logs and poles produced from the sold lands to such companies as will agree to ship via Northern Pacific if rates are equal. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix pp. 1-36; Answer, page 10).

26. Defendants' sales of timberland generally have been conditioned upon a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Request for Admission I; Response to Request for Admission I; Supplemental Response to Request for Admission I; Answer, page 10).

[fol. 247] 27. Out of 75 of defendants' contracts for the sale of timberland involving approximately 2,144,177 acres containing approximately 21,554,766,000 board feet of timber, at least 73 contracts covering 2,144,137 acres and containing 21,553,762,000 board feet of timber were subject to traffic clauses. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix, pp. 1-36).

G. Traffic Clauses Contained in Timber Sale Contracts

28. Defendants' timber sale contracts generally contain a traffic clause providing in substance that, rates being equal, the purchaser, and in some instances successors and assigns, shall ship over Northern Pacific lines all logs, poles, lumber and other products manufactured from the timber cut under the contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the contract. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if expense to the shipper is not increased above the cost of shipment over another rail line. (Answer, page 10; Request for Admission 11; Supplemental Response to Request for Admission 11).

29. Defendants' timber sale contracts generally contain a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Answer, page 10).

30. Out of 210 timber sale contracts involving 394,135 acres of land and more than 6,000,000,000 board feet of timber, at least 199 of such contracts included traffic clauses. In 1949 there were 31 timber sales contracts having traffic clauses in effect, covering 100,585 acres and 1,491,895,995 board feet of timber. (Request for Admission 11; Response to Request for Admission 11 and Exhibit B; Supplemental Response to Request for Admission 11 and Appendix, pp. 1-36).

[fol. 248] H. Traffic Clauses Contained in Industrial Leases Including Grain Elevator and Grain Warehouse Leases

31. Defendants at the time of suit had in effect 8,000 leases of sites used for various commercial and industrial purposes. All but about 400 of defendants' 8,000 industrial leases (other than grain elevator and grain warehouse

leases) contain a traffic clause providing that rates being as favorable, the lessee shall do all transportation business over the lines of Northern Pacific. (Answer, page 12; Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

32. Of defendants' 8,000 industrial leases, 939 are for grain elevator and grain warehouse purposes. All of such grain elevator and grain warehouse leases contain a clause providing in substance that Northern Pacific shall have the exclusive right to carry all grain to be transported from the grain elevator. (Answer, page 13; Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

33. Northern Pacific is a party to certain contracts with other railway companies which provide for joint operation of its lines of railway. There are 366 industrial leases in effect covering properties on the right-of-way for such lines of railway. Each of these industrial leases contains a traffic clause providing that, rates being as favorable, the lessee will do all transportation business over the lines of Northern Pacific. The lessees of these industrial sites affected by the joint operation agreements have been notified that the traffic clause is not effective against the joint operating railroad. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

34. In July 1913 all industrial leases of Northern Pacific's right-of-way between South Tacoma and Vancouver, Washington were cancelled and revised leases not containing any traffic clauses were substituted. No traffic [fol. 249] clause has been incorporated in such industrial lease since 1913. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

35. At the request of certain lessees, no traffic clause was incorporated in 390 industrial leases in effect at the commencement of suit. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

IV. Conclusory Findings

36. The actual and potential commerce involved in defendants' traffic clauses or preferential routing agreements is very substantial. The amount of commerce in transportation involved by each of the categories of traffic clauses is not inconsequential or insubstantial.

37. Defendants, as sellers and as lessors, by reason of title in fee simple, have dominance in the lands now owned by them and had dominance in the lands formerly owned at the time of sale of such lands.

38. Defendants have used their dominance in the lands sold and leased to require purchasers and lessees to purchase and use Northern Pacific's transportation service, under the conditions stated in finding 10.

39. The traffic clauses contained in defendants' leases and the traffic clauses employed in connection with the sales of timberland and timber prohibit lessees, grantees and purchasers of Northern Pacific lands and timber from exercising a free choice in the selection of transportation routing in the shipment of commodities to and from the leased and sold lands, and from the land on which the timber sold under the timber sale contracts is located, under the conditions stated in finding 10.

[fol. 250] Conclusions of Law

1. This Court has jurisdiction over the defendants.

2. There is no genuine issue as to any material fact with respect to any of defendants' traffic clauses except those contained in defendants' leases of land for use as industrial sites or for grain elevator or grain warehouse purposes.

3. For many years the defendants have been parties to contracts, agreements, arrangements and understandings in unreasonable restraint of commerce in the transportation of commodities by rail, truck and steamship lines, all in violation of Section 1 of the Sherman Act.

4. The amount of interstate trade and commerce which is restrained by the illegal contracts to which defendants are parties is substantial.

5. The plaintiff is entitled to judgment as a matter of law with respect to all of defendants' contracts and leases other than industrial leases.

Geo. H. Boldt, United States District Judge.

Dated: August 31, 1956.

[fol. 251] Presented by: Margaret H. Brass, Attorney, Department of Justice.

Approved as to form: Harold G. Boggs, Of Counsel for Defendants.

[fol. 252] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

TRANSCRIPT OF COURT'S ORAL DECISION DENYING MOTION FOR RECONSIDERATION—September 22, 1956

Transcript of Court's Oral Decision denying motion for reconsideration held in the above-entitled and numbered cause in the above-entitled court before the Honorable George H. Boldt, United States District Judge, on Friday, August 31, 1956, at Seattle, Washington.

APPEARANCES

On behalf of the Plaintiff: Miss Margaret Brass, Attorney at Law, Department of Justice, Washington, D. C.

On behalf of the Defendants: Mr. Dean H. Eastman, and Mr. Harold G. Boggs, Attorneys at Law, 909 Smith Tower Building, Seattle, Washington.

Mr. M. B. Countryman, Jr., General Counsel for Northern Pacific Railroad, St. Paul, Minnesota.

[fol. 253] The Court: Mr. Boggs, I have been listening very attentively, first, to be certain that I understand your proposition, and, secondly, to be certain that your propo-

sition was fully and thoroughly considered before I made this decision, and I am going to answer both in the affirmative.

I think I do understand your proposition and I gave it full thought, much mental or figurative sweat, if not tears, in arriving at my conclusions about it. I am going to deprive myself of the pleasure of having Miss Brass address me on this because I am so thoroughly satisfied that your contentions were thoroughly and fairly and fully considered, as far as my humble talents would permit of it, before I entered into this decision.

Now, I might say that this problem, as most that are presented to me, is not entirely free from doubt, not nearly so as a once written decision sometimes indicates. What we write for posterity sometimes is a little more emphatic than we might genuinely feel.

However, in this instance I have little doubt about it. Where you people differ in your view and Miss Brass's view, in my opinion is at the point of departure. It seems so to me.

If you are right in your view that in a case grounded [fol. 254] on Paragraph 1 of the Sherman Act, monop-ly must be shown and that the term "dominance" and "market" are interchangeable, then my opinion is probably wrong. However, I should point out that if that be true, there would never be any occasion for the doctrine of the typing cases because if you were considering an established monop-ly, you wouldn't have to be concerned about what the monopolist did with it. The monop-ly in and of itself would be unlawful, and whether used for typing purposes or otherwise would be of no concern.

Mr. Boggs: That contention is answered right in the Dupont case itself.

The Court: Well, let me point out wherein I think the Dupont case does not have the teaching for our case that you suggest.

In the first place, the Dupont case was grounded on Section 2 exclusively and has no necessary relationship to Section 1 at all.

Secondly, it was not contended or asserted in that case that there was any tying arrangement, and neither the

tying cases nor typing principles are cited or even discussed in that opinion.

Thirdly, the majority opinion itself and Justice Frankfurter's opinion both allude to the fact that very different considerations are involved when you are dealing with [fol. 255] Paragraph 1 rather than Paragraph 2 of the Sherman Act.

Justice Frankfurter says Sections 1 and 2, of course, implicate different considerations, and in the majority opinion, at the very beginning of it in stating the proposition for consideration, they say, "Market limitation is necessary under Dupont's theory to determine whether an alleged monop-ly violates Section 2. The ultimate consideration in such a determination is whether the defendant controlled the price and competition in the market for such trade or business as they are charged with monopolizing."

Now, the plain language of the Sherman Act, granting that it hasn't been seen to be so plain until recent times, makes a restraint of trade under Paragraph 1, illegal. It doesn't say anything about monop-ly.

Now, it has been construed, and I think rightly so, to mean that the restraint must tend towards monop-ly, but the Supreme Court has not in any case said that monop-ly is a requisite under Paragraph 1.

Now, the paragraph that deals with monop-ly, as such, is Paragraph 2 of the Act.

Your suggestion that the two are interchangeable, I cannot go along with. I cannot agree to that. It may be that you are right and I am wrong. I don't think so, but [fol. 256] the Supreme Court may hold otherwise.

Now, in the cases, at least until later times, there has been a regrettable confusion of terms, confusion of the two sections. Often they are referred to loosely in such a manner that it takes a very, very careful reading to comprehend which section is involved.

For example, in Times-Picayune, looking back over that opinion, after all the thought and effort I have given to it, I can see both sections involved, both 1 and 2. They found against Section 2 because there was no monop-ly for the reasons they outlined. They found against Section 1 because the tied commodity was not a separate and distinct

commodity, and they said so, although it is not spelled out quite as directly or briefly and precisely as I have tried to do in my opinion.

Now, in my judgment that is what is involved in Times-Picayune. That is what I meant by the footnote in my written decision. I was a little hesitant about putting that footnote in because there are other considerations that might perhaps enter into it. However, I finally put it in simply to illustrate a very narrow facet of the matter, and I am afraid that I haven't done it well from the fact that you misinterpreted the purpose of it. It still is a foot- [fol. 257] note, and rarely do footnotes become very authori-tive, so I am leaving it in.

Now, the Dupont case, in my judgment, has no bearing on our case at all.

Times-Picayune does insofar as it treats Section 1 and as I tried to point out in my opinion, rather briefly it is true, but that is no fault in opinions if they are clear, that the gravamen of the decision found that the second alleged tying product was not a separate and distinct commodity, and, accordingly, the tying principles were not applicable. At least that is the way I construe it.

I will agree that many times opinions take a great deal of reading and re-reading, and, unfortunately, at times language is used that is not easy to apply to other cases.

In any event, I am afraid you cannot pursuade me that your view is correct and the one expressed in the opinion is wrong, and I think I will have to deny the motion for reconsideration.

Do you feel I have given you a fair opportunity to present your argument?

Mr. Boggs: I wouldn't mind, however, making a comment or two on some of your Honor's remarks. First, that if there is monop-ly, that ends it in all cases. There may [fol. 258] be legal monop-lies and that is recognized in the Dupont case. It says, "Two questions raised at the record and decided by the Court below, the Court found that even if Dupont did possess monop-ly power over sales of cellophane, it was not subject to the Sherman Act of prosecution because, 1, the acquisition of that power was protected by patents; 2, that power was acquired solely through Dupont's expertness."

Now, you recall in the Aluminum case, Judge Learned Hand said that monop-ly may be thrust upon you and that it was not the purpose of the anti-trust laws to discourage what in the end is the aim of everyone who competes is to get the mostest.

The Court: I have that in mind.

Mr. Boggs: So that I can't agree that it would not be possible to have a violation under Section 1 merely because you happen to have what the Court might call a monop-ly. It might be a perfectly legal monop-ly.

Now, the second comment I wish to make is that I find it difficult to understand, I am not trading on words, we are talking about monop-ly, dominance, no matter how you may describe it, but in both cases the Court—that is, I am speaking now of the Times-Picayune case treating as tying contract and granting that there was this other [fol. 259] ground, and also the Section 2 ground that it was talking about Section 1, that in determining whether there was this power, this power which was a necessity in the process of determining the legality or illegality, they used exactly the same process, determining relevant market and your place in it.

Now, those are the two comments I have on your reasoning.

The Court: I cannot agree that the market dominance of a particular tying produce required under the typing doctrine, and monop-ly of the market as required for violation of Section 2 of the Sherman Act, are one and the same thing.

They have comparable elements that are to be considered, but I think you could have market dominance of a particular product and only a very small share of the whole market in that type of product.

Mr. Boggs: That might be true.

The Court: If you use market dominance over that particular product to force purchase of other tied products and there is a substantial volume of such restraint of trade, it is taboo.

Mr. Boggs: I would like to ask one more question which I would like to get clear also. When you say you are [fol. 260] dominant in that product, in the arriving at that

dominance, don't you think that you have to consider the relationship of that product with other competing products?

The Court: In some cases you would, in others you wouldn't. If the facts show that you have absolute fee simple title over vast quantities of land, that shows the dominance right there. There isn't any further need be shown because you had absolute market control even more unlimited in some respects than the patent holder.

Mr. Boggs: I just wanted to understand you.

The Court: We see, I think, each other's point of view. Unfortunately, we don't agree, and it may well be that you will turn out to be right and I am wrong. However, it certainly illustrates to my mind the wisdom of presenting all these basic issues clearly on motion for summary judgment without taking many long weeks and a vast amount of testimony when we can't agree as to what the criteria are on which we are to determine the case.

Mr. Boggs: I want to thank you, your Honor.

The Court: You may enter a minute order denying the motion for reconsideration.

[fol. 262] [File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil Action No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed October 23, 1956

I. Notice is hereby given that the Northern Pacific Railway Company and Northwestern Improvement Company,

the defendants above named, hereby appeal to the Supreme Court of the United States from the Partial Final Judgment dated and entered in this action on August 31, 1956.

This appeal is taken pursuant to Title 15, U.S.C., Section 29.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint.
2. Answer of Defendants, Northern Pacific Railway Company and Northwestern Improvement Company.
3. Plaintiff's Request for Admissions under Rule 36.
4. Defendants' Response to Plaintiff's Request for Admissions under Rule 36.

[fol. 263] 5. Stipulation of September 18, 1951, for taking deposition of John M. Hughes.

6. Stipulation dated November 21, 1952, re Sources of Fact Information and Related Matters.
7. Order entered November 22, 1952, approving Stipulation re Sources of Fact Information and Related Matters.
8. Supplemental Response to Plaintiff's Request for Admissions under Rule 36.
9. Plaintiff's Motion for Summary Judgment, dated July 31, 1953.
10. Stipulation dated July 6, 1954, re Taking Depositions of Various Witnesses.
11. Stipulation as to Use of Copies in Lieu of Original Documents; as to Certain Information in Connection With Industrial Leases and Grazing Leases, dated July 6, 1954.
12. Affidavit of R. G. Lindgren, dated September 29, 1954.

13. Depositions of the following witnesses:

J. M. Hughes	Wm. Magelsen
Virgil O. McWhorter	George Davidson
Alex Dunnitt	M. C. Simpson
Armand D. Olson	Susan Haughian
Russell Brown	A. W. Bradshaw
Derwin F. Lang	C. A. Mallett
Howard Raser	W. R. Woodson
Peter Pauly	Geo. M. Williamson
Frank Carey	Wallace Ulmer
Ralph Miracle	W. E. Husband
E. A. Phillips	Henry Berg
Everett E. Shuey	James G. Woodworth

14. Decision on Motion for Summary Judgment, dated June 23, 1956.

15. Defendants' Motion for Reargument and Reconsideration.

16. Transcript of oral decision denying motion for reconsideration.

17. Findings of Fact and Conclusions of Law.

18. Partial Final Judgment entered August 31, 1956.

[fol. 264] 19. Stay of Judgment entered September 5, 1956.

20. Supersedeas Bond.

III. The following questions are presented by this appeal:

1. Whether (except in the case of leases of industrial sites on lands held for transportation purposes) agreements which a railroad company and its subsidiary land company customarily include in contracts for the sale of their timber lands or timber and in leases of their lands for grazing purposes or for removal of coal, oil, gas or other natural resources, that the purchaser or lessee will ship over the lines of the railroad company, where the destination can be reached via its lines, all resulting traffic, provided its rates

and service are equal to those of any competing line, are per se unreasonable restraints of commerce in transportation in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C., §1) where in consequence of Government land grants in aid of construction of the railroad the companies own lands and reserved mineral rights aggregating several million acres scattered through six States and the actual or potential interstate commerce in transportation of commodities from the properties subject to such agreements is substantial but there is no evidence that the companies have any monopoly of any type of lands or timber or other natural resources in any area or that they have any monopoly power or dominance over any market for lands or timber or other natural resources of any kind.

[fol. 265] 2. Whether in such a case issues of fact raised by the pleadings as to the economic consequences of said agreements, their effects upon purchasers and lessees, their effects upon competition, and their reasonableness under all the circumstances, constitute material issues of fact for trial.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Northern Pacific Railway Company and Northwestern Improvement Company, Address: 909 Smith Tower, Seattle 4, Washington.

PROOF OF SERVICE (omitted in printing).

[fol. 271] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 274] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—January 21, 1957

APPEAL from the United States District Court for the Western District of Washington.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

January 21, 1957

Mr. Justice Clark took no part in the consideration or decision of this application.

Office - Supreme Court, U.S.
FILED
DEC 21 1956
JOHN T. FEY, Clerk

No. ~~644~~ 59

In the
Supreme Court of the United States

OCTOBER TERM, 1956

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

JURISDICTIONAL STATEMENT

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Seattle 4, Washington
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THE ARGUS PRESS, SEATTLE

No.....

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In the
Supreme Court of the United States

OCTOBER TERM, 1956

No. .....

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

JURISDICTIONAL STATEMENT

Appellants appeal from the partial final judgment of the United States District Court for the Western District of Washington, entered August 31, 1956, granting a permanent injunction against appellants, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinions of the District Court for the Western District of Washington, Northern Division, are not reported. Copy of the court's decision, dated June 23, 1956, granting in part appellee's motion for summary

* 142 F. Supp. 679

judgment, the transcript of the court's oral decision of August 31, 1956, denying appellants' motion for reconsideration, and copy of findings of fact, conclusions of law and partial final judgment are attached hereto as Appendix A.

JURISDICTION

This suit is a civil proceeding brought on May 26, 1949, under Section 4 of the Act of Congress of July 2, 1890 (26 Stat. 209, Title 15 U.S.C., Sec. 4), as amended, commonly known as the Sherman Act, to prevent and restrain alleged violations by appellants of Sections 1 and 2 of said Act. The judgment of the District Court was entered on August 31, 1956, and Notice of Appeal was filed in that court on October 23, 1956. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 15 U.S.C., Sec. 29. The following decisions sustain the jurisdiction to review the judgment: *Associated Press v. United States*, 326 U.S. 1; *International Salt Co. v. United States*, 332 U.S. 392; *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427; *Cold Metal Process Co. v. United Engineering Co.*, 351 U.S. 445.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether (except in the case of leases of industrial sites on lands held for transportation purposes) agreements which a railroad company and its subsidiary land company customarily include in contracts for the sale of their timber lands or timber and in leases of their lands for grazing purposes or for removal of coal, oil, gas or other natural resources, that the purchaser or

lessee will ship over the lines of the railroad company, where the destination can be reached via its lines, all resulting traffic, provided its rates and service are equal to those of any competing line, are *per se* unreasonable restraints of commerce in transportation in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C., §1) where in consequence of Government land grants in aid of construction of the railroad the companies own lands and reserved mineral rights aggregating several million acres scattered through six States and the actual or potential interstate commerce in transportation of commodities from the properties subject to such agreements is substantial but there is no evidence that the companies have any monopoly of any type of lands or timber or other natural resources in any area or that they have any monopoly power or dominance over any market for lands or timber or other natural resources of any kind.

2. Whether in such a case issues of fact raised by the pleadings as to the economic consequences of said agreements, their effects upon purchasers and lessees, their effects upon competition, and their reasonableness under all the circumstances, constitute material issues of fact for trial.

STATUTES INVOLVED

Section 1 of the Sherman Act (26 Stat. 209, 15 U.S.C. §1), set forth in Appendix B hereto. While the complaint alleges violations of Sections 1 and 2 of the Sherman Act, the motion for summary judgment and the judgment itself are grounded on alleged violation of only Section 1 of the Act.

STATEMENT

Appellee's motion for summary judgment filed on July 31, 1953, was based on a record which consists of the complaint, answer, admissions by appellants pursuant to request under Rule 36 of the Rules of Federal Procedure, stipulations, and depositions taken by appellants. In substance, the complaint charged appellants with illegal restraint of interstate trade and commerce, monopolization of and attempts to monopolize interstate trade and commerce, by reason of their admitted long-standing practice of including in contracts for sale of their timber lands or timber, and in leases of their lands for industrial sites, for grazing purposes or for removal of natural resources, agreements that the purchaser or lessee will ship over the lines of the appellant Railway Company, where the destination can be reached by its lines, all resulting traffic, provided its rates and service are equal to those of any competing line. The principal illegal effects of this practice were alleged to be:

(a) That the appellant, Northern Pacific, had secured a substantial monopoly of the transportation of commodities coming from and produced on its own lands and land belonging to others as well;

(b) That purchasers and lessees of appellants' lands had been and were being deprived of a free choice as to both the means of transportation to be used and of markets in which to sell commodities coming from the lands;

(c) That competing railroads, motor truck lines and steamship lines had been and were being deprived of an opportunity to compete in an open market for

the business of transporting products and commodities coming from appellants' lands and other lands.

The answer denied that the use of such agreements, hereinafter referred to as preferential routing agreements or traffic clauses, had resulted or could result in the effects alleged. In addition, the answer set up certain affirmative defenses.

A summary of the facts which must be deemed to be established for the purposes of the motion and this appeal is as follows:

Appellant Railway Company is the successor to Northern Pacific Railroad Company, a land grant railroad, which was chartered by Congress on July 2, 1864, for the purpose of constructing a railroad from Lake Superior to Puget Sound. Appellant, Northwestern Improvement Company, is a wholly-owned subsidiary of the Northern Pacific, which sells, leases and manages certain lands acquired from the Northern Pacific. Under the grants made by Congress by the Act of July 2, 1864 (13 Stat. 365) and the Joint Resolution of May 31, 1870 (16 Stat. 378), the Northern Pacific acquired approximately 39,400,000 acres of land located in the States of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon, the States through which its railroad was constructed and now operates. Prior to January 1, 1949, appellants and their predecessors had sold 37,216,767.9 acres of the lands thus acquired. Appellants still own approximately 2,700,000 acres of the total, and a substantial part of this acreage is leased for various purposes to others. Approximately 16,000,000 acres were sold with a reservation or exception in the vendor of all minerals, but ap-

pellants have since released by quit claim deed the exceptions or reservations of minerals in all but approximately 6,500,000 acres of this total. The lands sold and those still owned are of various types, some containing timber, some containing iron ore and some containing coal, oil, clay or other natural resources. Appellants are and at all times have been engaged in finding purchasers for the lands, and have not generally engaged in the leasing of lands for grazing purposes except pending sale thereof. Appellants are also engaged in the sale of standing timber and of rights to remove timber, oil, gas, metals, clay, coal and other natural resources from such lands.

The above acreage owned by appellants is exclusive of right of way, including that granted by said Act of July 2, 1864, and the Joint Resolution of May 31, 1870, held for transportation purposes.

Appellant, Northern Pacific, is engaged in the business of transporting commodities and products in interstate and intrastate commerce, including many of the commodities produced or derived from or distributed through the use of lands now or formerly owned by appellants and many products manufactured from such commodities. The Great Northern Railway, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines and steamship lines are available for transportation of such commodities and products during all or part of their interstate movement.

Among the affirmative defenses pleaded were the following:

(a) Preferential routing agreements of the type in

question have been usual and customary throughout the history of railroads. Such agreements are normal, natural and reasonable. They do not restrain competition, but on the contrary insure continuing competition as to rates and service.

(b) Appellants have at all times disposed of the land grant lands as rapidly as market conditions would permit. More than 90% of the 37,000,000 acres heretofore sold and conveyed have been conveyed without obtaining any agreement from the purchasers with respect to the routing of traffic. In substantially all cases in which an agreement with respect to the routing of traffic has been obtained from the purchaser or lessee, such agreement has been limited to traffic destined to points on or reached via lines of Northern Pacific, and has been made subject to a proviso that the railroad should not charge a higher rate than that charged by other competing transportation lines between the same points for similar services.

(c) The practices of appellants, hereinabove described, were in effect when the Great Northern and the Milwaukee were constructed or extended from St. Paul and Minneapolis to the Pacific Coast, and had been practiced for many years prior thereto and for many years prior to the advent of the trucking industry. Said competing transportation agencies, which have entered the field served by appellant, Northern Pacific, have grown and prospered and have been and still are in active competition with the Northern Pacific. The products and commodities shipped via Northern Pacific because of such preferential routing clauses constitute, and have at all times

constituted, a relatively small proportion of the commodities and products of like character produced and transported to, from and within the territory served by Northern Pacific.

Appellee's theory in arguing its motion was that any issues of fact raised by the pleadings as to the actual or potential effects of the routing agreements upon the purchasers and lessees affected and upon competition in interstate transportation were immaterial because in its view such routing agreements constitute tying arrangements violative of Section 1 of the Sherman Act under the following rule enunciated in *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594:

> "* * * When the seller enjoys a monopolistic position in the market for the 'tying' product, *or* if a substantial volume of commerce in the 'tied' product is restrained, a tying arrangement violates the narrower standards expressed in Section 3 of the Clayton Act because from either factor the requisite potential lessening of competition is inferred. And because for even a lawful monopolist it is 'unreasonable, per se, to foreclose competitors from any substantial market,' a tying arrangement is banned by Section 1 of the Sherman Act when *both* conditions are met." (pp. 608, 609.)

Appellee sought to establish the existence of the first of these conditions on the highly novel theory that the ownership of land, regardless of its location, character or extent, confers monopoly power similar to that conferred by a patent on an invention. On this premise, it argued that it is unnecessary to show dominance over any market for lands and that it is a violation of Section 1 of the Sherman Act for appellants to use mere own-

ership of land to secure the preferential routing via Northern Pacific of any substantial amount of traffic. It relied particularly on *International Salt Co. v. United States*, 332 U.S. 392. The District Court adopted appellee's theory in this respect. In its decision of June 23, 1956, the court said:

> "The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land."

Although the answer alleged that the traffic actually affected by the routing clauses constituted a relatively small proportion of the total traffic of like character in the territory served by the Northern Pacific and no evidence upon the subject was before the Court, the Court concluded merely because of the number of leases and contracts for sale of timber containing such clauses that the "actual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial, however that commerce may compare with the whole volume of commodity transportation in the area served by NP" and that the "amount of commerce in transportation restrained by the traffic clauses in each of the categories in question is not inconsequential or insubstantial."

The court therefore concluded that on the established facts all of the routing clauses in question, except those in industrial leases, are shown to be violative of Section 1 of the Sherman Act. As to the industrial leases which,

with minor exceptions, all grant a use of right of way lands, it was the court's view that, as such lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity, a question of fact was presented which would preclude summary judgment and require trial on the merits to determine whether such leases involve distinct and separate tied and tying commodities.

Appellants' motion for reconsideration which called particular attention to this court's discussion of what constitutes the relevant market in *United States v. E. I. duPont de Nemours & Co.*, 351 U.S. 377, decided June 11, 1956, was argued and denied. Findings of Fact, Conclusions of Law and Partial Final Judgment enjoining appellants from enforcing existing routing agreements and from entering into any further such agreements, except in the case of the industrial leases, were entered in accordance with the court's decision. Order staying judgment pending the taking of an appeal and during the pendency of this appeal was entered September 5, 1956.

THE QUESTIONS ARE SUBSTANTIAL

The judgment below would prohibit a practice followed by the Northern Pacific and other railroads for more than half a century, notwithstanding the fact that the validity of preferential routing clauses has been repeatedly sustained by all the courts which have considered them* and in the face of a record which is bar-

**Preferential* routing clauses do not *exclude* competitors from the market for transportation services. They preserve competition in the matter of rates and service and control the choice between transportation agencies.

ren of any evidence that the use of the clauses has had or will have any of the economic effects alleged in the complaint. This court has repeatedly approved its statement in *Board of Trade v. United States*, 246 U.S. 231, that in order to test the legality of a restraint of trade the court must ordinarily consider the facts peculiar to the business to which the restraint is applied, the nature of the restraint and its effect, actual or probable. Here this inquiry has been foreclosed by the court's error in failing to recognize that before appellants can be held to occupy a dominant or monopolistic position in the market for their lands, the court must first determine what is the relevant market or markets for those lands. This fundamental error was induced by the false analogy drawn by appellee between the position of an owner of land and the holder of a patent for an invention in an attempt to bring this case within the orbit of *International Salt Co. v. United States*. The following excerpts from the court's opinions show the basis of his decision:

> "Defendants argue that the first tying element, i.e., market domination over the tying product, is not established because the record does not show

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only where that choice is determined by extrinsic considerations, such as friendship, reciprocity, or the like. For this and other reasons they have uniformly been upheld as not in restraint of trade. *Bald Eagle Valley R. Co. v. Nittany Valley R. Co.*, 171 Pa. St. 284, 33 Atl. 239; *Stephenson v. St. Louis Southwestern Ry. Co. of Texas*, Tex. Civ. App., 181 S.W. 563; *Southwestern Lumber Co. of New Jersey v. Kerr*, 11 F. Supp. 253, aff'd. 78 F.(2d) 348, Cert. Den. 296 U.S. 611. And they have been upheld and enforced as against other objections. *United States v. Northern Pacific Ry. Co.*, 18 F.(2d) 299; *Cascade Timber Co. v. Northern Pacific Ry. Co.*, 28 Wn.(2d) 684, 184 P.(2d) 90; *Northern Pacific Ry. Co. v. St. Paul & Tacoma Lumber Co.*, 4 F.(2d) 359; *Oregon R. & Navigation Co. v. Dumas*, 181 Fed. 781; *Texas & Pacific R. Co. v. Texas Short Line R. Co.*, 80 S.W. 567; *Saner-Whiteman Lumber Co. v. Texas & Mo. R. Co.*, 282 S.W. 267.

the proportion of NP lands of various types to the total of the lands of the same types sold and leased in the area of defendants' operations. This contention ignores the plain language of the cited decisions, providing that market dominance of 'the tying commodity' is required. The tying commodity need only be the particular property or product to which forced purchase of the second commodity is tied; certainly it does not necessarily include all of the similar and competing commodities which may be in the market. * * *

"The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land." (June 23, 1956.)

"If you are right in your view that in a case grounded on Paragraph 1 of the Sherman Act, monopoly must be shown and that the term 'dominance' and 'market' are interchangeable, then my opinion is probably wrong. However, I should point out that if that be true, there would never be any occasion for the doctrine of the tying cases because if you were considering an established monopoly, you wouldn't have to be concerned about what the monopolist did with it. The monopoly in and of itself would be unlawful, and whether used for tying purposes or otherwise would be of no concern.

" * * * If the facts show that you have absolute fee simple title over vast quantities of land, that shows the dominance right there. There isn't any further need be shown because you had absolute

market control even more unlimited in some respects than the patent holder." (August 31, 1955)

Nowhere does the court explain why the principle of the patent tying cases should be applied to ownership of land any more than to ownership of any other type of non-patented property. In *Standard Oil v. United States*, 337 U.S. 293, a Clayton Act case, this court drew a clear distinction as to the proof required to establish illegality of a tying contract under that Act and under the Sherman Act. The court said:

> "It seems hardly likely that, having with one hand set up an express prohibition against a practice thought to be beyond the reach of the Sherman Act, Congress meant, with the other hand, to reestablish the necessity of meeting the same tests of detriment to the public interest as that Act had been interpreted as requiring. Yet the economic investigation which appellant would have us require is of the same broad scope as was adumbrated with reference to unreasonable restraints of trade in *Board of Trade v. United States*, 246 US 231, 62 L ed 683, 38 S Ct 242, Ann Cas 1918D 1207." (p. 312)

So here, to sustain the District Court would be to abolish all distinction between Section 3 of the Clayton Act and Section 1 of the Sherman Act, for obviously no tying arrangement could ever exist without ownership and hence "market control" by the appellants of "the particular property or product to which forced purchase of the second commodity is tied." The only question which would then be left in any tying case would be the substantiality of the commerce affected.

That patent tying cases, furthermore, are *sui generis*

is strongly intimated in the *Standard Oil* case and the *Times-Picayune* case. The court said in the former case that it could not dispose of it by citing the *International Salt* case, because no patent was involved and the requisite percentage of control of the market for the tying device was absent (p. 307), and in the latter case the court said:

> "Unlike other 'tying' cases where patents or copyrights supplied the requisite market control; any equivalent market 'dominance' in this case must rest on comparative marketing data." (p. 611)

The abuses which the rule of the patent tying cases and the Clayton Act sought to prevent have been repeatedly stated by the court in both patent infringement and antitrust cases. The effectiveness of the power of lawful monopoly conferred by the patent to expand into other fields so as to eliminate competition in the market for the tied article entirely has been demonstrated time and again before and since the passage of the Clayton Act. *Ethyl Gasoline Corp. v. United States*, 309 U.S. 436, 456. There is no decision and nothing in reason or experience which would support extension of the principle of the patent tying cases to the instant case.

The court's decision is also grounded on the statement in the *Standard Oil* case that in the *International Salt* case the availability of substitutes for the tying device was deemed irrelevant. On this point the District Court said:

> "* * * In *International Salt Co. v. U.S.*, supra, market dominance of defendant's particular salt

dispenser was held sufficient to sustain the first element of an unreasonable restraint *per se*, even though other dispensers were available in the market. *Standard Oil Co. of Calif., et al v. United States*, 337 U.S. 293 (1949) affirms such view of the *International Salt Co.* decision in the following language: 'It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition.'" (June 23, 1956)

But in *International Salt* the existence of a patent monopoly made determination of the relevant market and proof of market dominance wholly unnecessary. In the *du Pont* case, however, where the question was whether monopoly existed, this court held that the relevant market was not the market for cellophane, but the market for all flexible packaging materials. The Government contended that in determining whether monopoly power exists over trade in a product, substitutes will not be considered other than those which are substantially fungible with the monopolized product and sell at substantially the same price. The court rejected this contention because it would lead to the absurd result that only physically identical products would be a part of the market.

The District Court also declined to give the decision in the *du Pont* case any weight, simply because it was grounded on Section 2 exclusively and because no tying arrangement was involved. In so ruling the court ignored the fact that in the *Times-Picayune* case this court

held that dominance in the advertising market must be decisive of the legality of the tying agreements in question under Section 1 of the Act. It did consider whether advertising media other than New Orleans daily newspapers could be deemed a part of the relevant market. While it held that the relevant market was limited to the advertising in the New Orleans daily newspapers, it did not reject consideration of substitutes as a matter of law, but held only that "the record contains no evidence which could circumscribe a broader or narrower 'market' defined by buyers' habits or mobility of demand" (p. 612 and note 31). In the *du Pont* case the court went through exactly the same process in circumscribing the relevant market in order to determine whether there had been a violation of Section 2. In so doing, it cites the *Times-Picayune* case with approval on this very point (p. 394). There is, therefore, no basis for making any distinction between the kind of market dominance necessary to support a finding of violation of Section 1 of the Sherman Act under the principles of the tying cases and the kind of market dominance required to support a finding of unlawful monopolization under Section 2, except the obvious distinction that the necessary market dominance in tying cases may be, and usually is, perfectly lawful in itself.

Finally, the full extent of the court's error is demonstrated by his comment that if appellants' position that the same kind of market dominance must be shown in tying cases as in unlawful monopolization cases is correct,

> "* * * there would never be any occasion for the doctrine of the tying cases because if you were con-

> sidering an established monopoly, you wouldn't have to be concerned about what the monopolist did with it. The monopoly in and of itself would be unlawful, and whether used for tying purposes or otherwise would be of no concern."

This view flouts the rule of the tying cases entirely. As was said in the *Times-Picayune* case:

> "* * * And because for even a *lawful* monopolist it is 'unreasonable, per se, to foreclose competitors from any substantial market,' a tying arrangement is banned by Section 1 of the Sherman Act when *both* conditions are met." (p. 609)

And again

> "* * * the essence of illegality in tying agreements is the wielding of monopolistic leverage; a seller exploits his dominant position in one market to expand his empire into the next." (p. 611)

It is not the enjoyment of a dominant position which the law condemns under Section 1, but, contrary to the District Court's opinion, in the tying cases the chief concern of the courts is what the monopolist does with his power over one thing by way of imposing a restraint of trade in another.

It is submitted that the decision of the District Court fails to recognize that tying agreements in connection with the sale or lease of lands or standing timber or other natural resources may not, any more than any other tying agreements which are not within the prohibition of the Clayton Act, be presumed to result in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act without proof of their actual or intended effects, merely because they stem from the ownership of land and affect a not in-

substantial amount of commerce, and that the question of the reasonableness of the restraint in all such cases must depend upon a further showing that a defendant has such a dominating position in the relevant market for the particular type of land or other natural resources that any such use of his ownership rights will necessarily represent the wielding of monopolistic leverage to restrain commerce in the tied product. The decision would invalidate without proof of actual or potential harmful effects a practice followed by the Northern Pacific and many other railroads—and uniformly sustained by the courts—over a long period of years. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,
v.
NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Defendants*.
No. 2277

DECISION

By this action the government seeks to have certain contractual provisions contained in deeds and leases granted by defendants held illegal as contravening Section 1 of the Sherman Antitrust Act, 26 Stat. 209[1]. The action is authorized by Section 4 of the Act. Injunctive relief is sought to prevent enforcement of the contract provisions which defendants designate as "preferential routing agreements" and government counsel refer to as "traffic clauses." The terms of the clauses being the same under either designation, for brevity and convenience the latter term will be used herein.

The complaint was filed May 26, 1949. Since then, by answer, interrogatories, depositions and stipulation, many facts have been agreed to. The government moves for summary judgment under Rule 56(a)(c) on the undisputed facts. Discretion is not involved in considering the facts and the motion can only be granted to such extent as the law may warrant on facts shown in the record beyond genuine issue.

[1]"Every contract. . . . in restraint of trade or commerce among the several States. . . . is hereby declared to be illegal. . . ."

The material facts thus shown are: Defendant Northern Pacific Railway Company, a Wisconsin corporation (the NP herein), is the successor to a land grant railroad which in 1864 was chartered by Act of Congress for the purpose of constructing a railroad from Lake Superior to Puget Sound[2]. The NP is primarly engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. Defendant Northwestern Improvement Company, a Delaware corporation (the Land Company herein) and wholly owned subsidiary of the NP conducts the business of selling, leasing and managing NP lands.

By congressional land grants the NP acquired slightly less than 39,500,000 acres of public land located, except for about 100,000 acres, in the area of the states in which the NP railway lines are now located, i.e., Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon.

Prior to the commencement of this action much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way, etc. classified by the Interstate Commerce Commission as for "transportation purposes." Some of the presently owned land was not acquired under the grants of public land. Approximately 21,000,000 acres of land were sold without reservation of any kind. Of the acreage sold with mineral reservations, 6,500,000 acres remain subject to such reservation.

The lands now owned by the defendants, as well as

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[2] For the summary of the history of the NP land grants see *United States v. Northern Pacific Railway Co., et al.* 256 U.S. 51 and *United States v. Northern Pacific Railway Co., et al.* 311 U.S. 317.

lands which they formerly owned and sold, are of many types. Some contain timber, iron ore, coal, oil and other natural resources. Some of the lands have been used for grazing and agriculture, while still others have been devoted to industrial developments of various kinds.

Traffic clauses in a variety of forms have been included in some of defendants' deeds and in almost all of the leases of lands in each of the categories referred to. The minimal obligation of all of the clauses in question requires the grantee or lessee to route via NP railway shipments of commodities produced by or on the land sold or leased, provided neither a lower rate nor better service be available from a competing line. Typical examples of defendants' traffic clauses are given below[3].

[3] A grazing lease: "All shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines."

A lease of coal lands: "The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line."

A timber contract or a contract for the sale of timberlands: "The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports."

The government contends that under the stated facts, shown in the record without genuine dispute, the traffic clauses provide for restraints of trade which are unreasonable per se and therefore violative of Section 1 of the Sherman Act under principles announced in the "tying" cases[1]. The essence of the contention is that defendants' dominance of NP land as a tying commodity or device has been used to foreclose or restrict competition in the tied commodity, transportation service to and from the land, the commerce in which is not "inconsequential or insubstantial" in amount.

Defendants contend that the rules of the tying cases are inapplicable to the facts of the instant case; that if so, neither the necessary dominance over the market in the tying commodity nor the required substantial volume of commerce in the tied commodity appears on the present record; and that defendants are entitled to present proof in support of their affirmative defenses alleging that in practice and effect the restraint of the traffic clauses is reasonable and beneficial.

Most, if not all, of the decisions of the United States

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[1] *Motion Picture Patents Co. v. Universal Film Mfg. Co., et al.* 243 U.S. 502 (1917); *McBoyle v. United States*, 283 U.S. 27 (1931); *International Business Machines Corp. v. United States*, 298 U.S. 131 (1936); *Leitch Mfg. Co. v. Barber Co.*, 302 U.S. 458 (1937); *Interstate Circuit Inc. et al v. United States*, 306 U.S. 208 (1939); *Ethyl Gasoline Corp. et al v. United States*, 309 U.S. 436 (1940); *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U.S. 488 (1941); *B. B. Chemical Co. v. Ellis, et al.* 314 U.S. 495 (1942); *United States v. Masonite Corp., et al.* 316 U.S. 265 (1942); *Mercoid Corp. v. Mid-Continent Investment Co., et al.* 320 U.S. 661 (1944); *Mercoid Corp. v. Minneapolis-Honeywell Regulator Co.*, 320 U.S. 680 (1944); *Hartford Empire Co. v. United States*, 323 U.S. 386 (1945); *Associated Press et al v. United States*, 326 U.S. 1 (1945); *International Salt Co. v. United States*, 332 U.S. 392 (1947); *United States v. Griffith et al.* 334 U.S. 100 (1948); *United States v. Paramount Pictures, Inc. et al.* 334 U.S. 131 (1948); *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953).

Supreme Court in tying cases based on either Sherman Act or Clayton Act or both, are listed in footnote 4.

Not any one of the cited cases is closely apposite in facts to the present case; but the facts of this case bring it squarely within a formula derived from all of the cited cases: When (1) a seller or lessor, enjoying market control of a particular commodity, in contracts for the sale or lease of such commodity, requires buyer or lessee to purchase a distinctly different and separate commodity, and (2) the amount of interstate commerce in the tied commodity is not insignificant or insubstantial, the tying arrangement is illegal *per se* under Section 1 of the Sherman Act.

The rationale of the tying doctrine is briefly stated in the latest of the decisions, *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953):

> "Tying arrangements, we may readily agree, flout the Sherman Act's policy that competition rule the marts of trade. Basic to the faith that a free economy best promotes the public weal is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the Nation's resources and thus direct the course its economic development will take. Yet '[t]ying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California v. United States*, 337 U.S. 293, 305 (1949). By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market. But any intrinsic superiority of the 'tied' product would convince freely choosing

buyers to select it over others, anyway. Thus '[i]n the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one.' Id., at 306. Conversely, the effect on competing sellers attempting to rival the 'tied' product is drastic: to the extent the enforcer of the tying arrangement enjoys market control, other existing or potential sellers are foreclosed from offering up their goods to a free competitive judgment; they are effectively excluded from the marketplace.

"For that reason, tying agreements fare harshly under the laws forbidding restraints of trade. . . ." (p. 605-606)[5]

The Supreme Court sustained summary judgments finding tying arrangements violations *per se* of the Sherman Act in *Associated Press et al v. United States*, 326 U.S. (1945) and in *International Salt Co., Inc. v. United States*, 332 U.S. 392 (1947). Application of tying principles is not limited to cases involving monopolies granted by patent and copyright. *United States v. Griffith et al*, 334 U.S. 100 (1948); *Times-Picayune v. U.S.*, supra. Specific intent to restrain trade or build monopoly is not necessary for a finding of antitrust law violation and "it is unreasonable *per se* to foreclose

[5] Existence of the necessary tying elements was not found in the *Times-Picayune* case. If in that case defendant newspaper publisher had required by contract provision the purchasers of advertising space to subscribe to defendant's papers, prices and service being equal to that of competing papers, with substantiality satisfied, the illegality *per se* of the requirement could hardly be doubted. The postulated situation is more analogous to the present case than the facts found in *Times-Picayune*.

competitors from any substantial market." *U.S. v. Griffith*, supra; *International Salt Co., Inc. v. U.S.*, supra.

The traffic clauses in question prohibit grantees and lessees of NP lands from a free choice in the selection of transportation routing in the shipment of commodities to and from the lands sold or leased. Admittedly, a large, if not major, portion of such shipments are in interstate commerce. Obviously, the traffic clauses provide at least a nominal "restraint of trade or commerce among the several states." While the Sherman Act provides that "every" contract in such restraint is illegal, ever since *Standard Oil v. United States*, 221 U.S. 1 (1911), only unreasonable restraints are held condemned by the Act. Unreasonable restraints are those which tend to create monopoly by restricting consumers or purchasers from enjoyment of the advantages of free competition. *Standard Oil v. U.S.* supra; *U.S. v. American Tobacco Co.*, 221 U.S. 106 (1911). Among the restraints held to be unreasonable *per se* are those effecting price fixing, boycott and a tying arrangement involving the two elements previously stated.

Defendants argue that the first tying element, i.e., market domination over the tying product, is not established because the record does not show the proportion of N.P. lands of various types to the total of the lands of the same types sold and leased in the area of defendants' operations. This contention ignores the plain language of the cited decisions, providing that market dominance of "the tying commodity" is required. The tying commodity need only be the particular property

or product to which forced purchase of the second commodity is tied; certainly it does not necessarily include all of the similar and competing commodities which may be in the market. Restraints of trade to be illegal under Section 1 of the Sherman Act must necessarily *tend* to monopoly but need not fully or substantially achieve it. In *International Salt Co. v. U.S.*, supra, market dominance of defendant's particular salt dispenser was held sufficient to sustain the first element of an unreasonable restraint *per se*, even though other dispensers were available in the market. *Standard Oil Co. of Calif., et al v. United States*, 337 U.S. 293 (1949) affirms such view of the *International Salt Co.* decision in the following language: "It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition." Defendants urge that *U.S. v. E. I. DuPont de Nemours & Co.*, 351 U.S. 377, decided after argument of the present case, holds in effect that the market dominance required as the first element of an illegal tying device is synonymous with the monopoly that is a requisite for violation of paragraph 2 of the Sherman Act. *DuPont*, grounded solely on paragraph 2, was not concerned with a tying arrangement and neither the tying principles nor the decisions in which they have been developed are discussed in the opinion. As the majority opinion indicates and the concurring opinion states: "Sections 1 and 2 of course implicate different considerations." Nothing in the reasoning or language of the Supreme

Court decisions requires adoption of defendants' view of the market involved in the first element of the tying formula.

The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land.

Existence of the second of the tying elements is dependent on the amount of commerce in the tied commodity with, at most, only remote regard to the total amount of commerce in commodities of a like or similar kind in the same market area. The record amply shows that actual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial, however that commerce may compare with the whole volume of commodity transportation in the area served by NP[6]. The ad-

[6]By their Responses to Plaintiff's Request for Admissions under Rule 36, filed January 14, 1952, defendants admitted the existence of the following leases containing traffic clauses, all valid and subsisting as of 1949, the year in which suit was commenced:

(1) At least 1,000 leases involving more than 1,000,000 acres of grazing lands. (See Response to Request IV)

(2) At least 16 leases of iron ore land, covering 5,261 acres. (See Response to Request VII)

(3) At least 2 leases of coal lands. (See Response to Request VI)

(4) At least 19 oil and gas permits or leases, covering 135,000 acres of land. (See Response to Request V)

In addition, defendants admit the existence of the following contracts for the sale of timber or timberland subject to traffic clauses:

(1) Out of 75 contracts for the sale of timberland, involving over 2,000,000 acres of land and over 21,000,000,000 board feet of timber,

mitted amount of commerce in transportation restrained by the traffic clauses in each of the categories in question is not inconsequential or insubstantial.

The stipulation of the parties filed May 16, 1950 shows that of the approximate 8,000 industrial leases (including grain elevator and grain warehouse leases), with minor exceptions, all grant a use of right-of-way lands. Such lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity. Whether under such circumstances the industrial leases involve distinct and separate tied and tying commodities, as held required and found lacking in *Times-Picayune v. U.S.*, supra[7], presents at least a question of fact which precludes summary judgment and will require trial as to all issues pertaining to the industrial leases.

On the established facts all of the traffic clauses in question, excepting those in the industrial (including grain elevator and grain warehouse) leases, are shown to be violative of Section 1 of the Sherman Act under the principles enunciated in the tying cases. Findings and decree to such effect will be settled at a hearing for

[7] "The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in economic harm to competition in the 'tied' market. . . ." *Times-Picayune v. U.S.*, supra.

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at least 42 of such contracts were subject to traffic clauses. (See Response to Request I and Exhibit A)

(2) Out of 210 timber contracts, involving more than 390,000 acres of land and more than 6,000,000,000 board feet of timber, at least 157 of such contracts included traffic clauses. (See Response to Request II and Exhibit B)

the purpose which may be noted at the convenience of counsel.

Dated this 23rd day of June, 1956.

GEO. H. BOLDT
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, vs. NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Defendants*.	}	No. 2277

TRANSCRIPT OF COURT'S ORAL DECISION denying motion for reconsideration held in the above-entitled and numbered cause in the above-entitled court before the Honorable GEORGE H. BOLDT, United States District Judge, on Friday, August 31, 1956, at Seattle, Washington.

APPEARANCES

On behalf of the Plaintiff:

Miss Margaret Brass,
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On behalf of the Defendants:

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and
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Mr. M. B. Countryman, Jr.,
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St. Paul, Minnesota.

THE COURT: Mr. Boggs, I have been listening very attentively, first, to be certain that I understand your proposition, and, secondly, to be certain that your proposition was fully and thoroughly considered before I made this decision, and I am going to answer both in the affirmative.

I think I do understand your proposition and I gave it full thought, much mental or figurative sweat, if not tears, in arriving at my conclusions about it. I am going to deprive myself of the pleasure of having Miss Brass address me on this because I am so thoroughly satisfied that your contentions were thoroughly and fairly and fully considered, as far as my humble talents would permit of it, before I entered into this decision.

Now, I might say that this problem, as most that are presented to me, is not entirely free from doubt, not nearly so as a once written decision sometimes indicates. What we write for posterity sometimes is a little more emphatic than we might genuinely feel.

However, in this instance I have little doubt about it. Where you people differ in your view and Miss Brass's view, in my opinion is at the point of departure. It seems so to me.

If you are right in your view that in a case grounded on Paragraph 1 of the Sherman Act, monoply must be shown and that the term "dominance" and "market" are interchangeable, then my opinion is probably wrong. However, I should point out that if that be true, there would never be any occasion for the doctrine of the tying cases because if you were considering an established monoply, you wouldn't have to be con-

cerned about what the monopolist did with it. The monopoly in and of itself would be unlawful, and whether used for tying purposes or otherwise would be of no concern.

MR. BOGGS: That contention is answered right in the Dupont case itself.

THE COURT: Well, let me point out wherein I think the Dupont case does not have the teaching for our case that you suggest.

In the first place, the Dupont case was grounded on Section 2 exclusively and has no necessary relationship to Section 1 at all.

Secondly, it was not contended or asserted in that case that there was any tying arrangement, and neither the tying cases nor tying principles are cited or even discussed in that opinion.

Thirdly, the majority opinion itself and Justice Frankfurter's opinion both allude to the fact that very different considerations are involved when you are dealing with Paragraph 1 rather than Paragraph 2 of the Sherman Act.

Justice Frankfurter says Sections 1 and 2, of course, implicate different considerations, and in the majority opinion, at the very beginning of it in stating the proposition for consideration, they say, "Market limitation is necessary under Dupont's theory to determine whether an alleged monopoly violates Section 2. The ultimate consideration in such a determination is whether the defendant controlled the price and competition in the market for such trade or business as they are charged with monopolizing."

Now, the plain language of the Sherman Act, granting that it hasn't been seen to be so plain until recent times, makes a restraint of trade under Paragraph 1, illegal. It doesn't say anything about monoply.

Now, it has been construed, and I think rightly so, to mean that the restraint must tend towards monoply; but the Supreme Court has not in any case said that monoply is a requisite under Paragraph 1.

Now, the paragraph that deals with monoply, as such, is Paragraph 2 of the Act.

Your suggestion that the two are interchangeable, I cannot go along with. I cannot agree to that. It may be that you are right and I am wrong. I don't think so, but the Supreme Court may hold otherwise.

Now, in the cases, at least until later times, there has been a regrettable confusion of terms, confusion of the two sections. Often they are referred to loosely in such a manner that it takes a very, very careful reading to comprehend which section is involved.

For example, in Times-Picayune, looking back over that opinion, after all the thought and effort I have given to it, I can see both sections involved, both 1 and 2. They found against Section 2 because there was no monoply for the reasons they outlined. They found against Section 1 because the tied commodity was not a separate and distinct commodity and they said so, although it is not spelled out quite as directly or briefly and precisely as I have tried to do in my opinion.

Now, in my judgment that is what is involved in Times-Picayune. That is what I meant by the footnote

in my written decision. I was a little hesitant about putting that footnote in because there are other considerations that might perhaps enter into it. However, I finally put it in simply to illustrate a very narrow facet of the matter, and I am afraid that I haven't done it very well from the fact that you misinterpreted the purpose of it. It still is a footnote, and rarely do footnotes become very authoritative, so I am leaving it in.

Now, the Dupont case, in my judgment, has no bearing on our case at all.

Times-Picayune does insofar as it treats Section 1 and as I tried to point out in my opinion, rather briefly it is true, but that is no fault in opinions if they are clear, that the gravamen of the decision found that the second alleged tying product was not a separate and distinct commodity, and, accordingly, the tying principles were not applicable. At least that is the way I construe it.

I will agree that many times opinions take a great deal of reading and re-reading, and, unfortunately, at times language is used that is not easy to apply to other cases.

In any event, I am afraid you cannot persuade me that your view is correct and the one expressed in the opinion is wrong, and I think I will have to deny the motion for reconsideration.

Do you feel I have given you a fair opportunity to present your argument?

MR. BOGGS: I wouldn't mind, however, making a comment or two on some of your Honor's remarks.

First, that if there is monoply, that ends it in all cases. There may be legal monoplies and that is recognized in the Dupont case. It says, "Two questions raised at the record and decided by the Court below, the Court found that even if Dupont did possess monoply power over sales of cellophane, it was not subject to the Sherman Act of prosecution because, 1, the acquisition of that power was protected by patents; 2, that power was acquired solely through Dupont's expertness."

Now, you recall in the Aluminum case, Judge Learned Hand said that monoply may be thrust upon you and that it was not the purpose of the anti-trust laws to discourage what in the end is the aim of everyone who competes is to get the mostest.

THE COURT: I have that in mind.

MR. BOGGS: So that I can't agree that it would not be possible to have a violation under Section 1 merely because you happen to have what the Court might call a monoply. It might be a perfectly legal monoply.

Now, the second comment I wish to make is that I find it difficult to understand, I am not trading on words, we are talking about monoply, dominance, no matter how you may describe it, but in both cases the Court—that is, I am speaking now of the Times-Picayune case treating as tying contract and granting that there was this other ground, and also the Section 2 ground that it was talking about Section 1, that in determining whether there was this power, this power which was a necessity in the process of determining the legality or illegality, they used exactly the same process, determining relevant market and your place in it.

Now, those are the two comments I have on your reasoning.

THE COURT: I cannot agree that the market dominance of a particular tying produce required under the tying doctrine, and monoply of the market as required for violation of Section 2 of the Sherman Act, are one and the same thing.

They have comparable elements that are to be considered, but I think you could have market dominance of a particular product and only a very small share of the whole market in that type of product.

MR. BOGGS: That might be true.

THE COURT: If you use market dominance over that particular product to force purchase of other tied products and there is a substantial volume of such restraint of trade, it is taboo.

MR. BOGGS: I would like to ask one more question which I would like to get clear also. When you say you are dominant in that product, in the arriving at that dominance, don't you think that you have to consider the relationship of that product with other competing products?

THE COURT: In some cases you would, in others you wouldn't. If the facts show that you have absolute fee simple title over vast quantities of land, that shows the dominance right there. There isn't any further need be shown because you had absolute market control even more unlimited in some respects than the patent holder.

MR. BOGGS: I just wanted to understand you.

THE COURT: We see, I think, each other's point of

view. Unfortunately, we don't agree, and it may well be that you will turn out to be right and I am wrong. However, it certainly illustrates to my mind the wisdom of presenting all these basic issues clearly on motion for summary judgment without taking many long weeks and a vast amount of testimony when we can't agree as to what the criteria are on which we are to determine the case.

MR. BOGGS: I want to thank you, your Honor.

THE COURT: You may enter a minute order denying the motion for reconsideration.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, vs. NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Defendants*.	CIVIL No. 2277

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Description of Defendants

1. Defendant Northern Pacific Railway Company (Northern Pacific) is a Wisconsin corporation. It was formed in 1870 under the name of Superior and St. Croix Railroad Company. Northern Pacific is the successor to the Northern Pacific Railroad Company, which was chartered by a special act of Congress on July 2, 1864. In 1896 Northern Pacific acquired the properties of the Northern Pacific Railroad Company. Since that time Northern Pacific has engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. It is found and transacts business in this District. (Complaint, Par. 7; Par. 2; Answer, Par. 3, 1).

2. Defendant Northwestern Improvement Company (Northwestern) is a Delaware corporation and a wholly-owned subsidiary of Northern Pacific. In 1942 it became the successor in interest to a wholly-owned subsidiary of Northern Pacific, which was incorporated in New Jersey in 1897, under the name of Northwestern Improvement Company. Defendant Northwestern sells,

leases and manages certain lands acquired from Northern Pacific. It is found and transacts business in this District. (Complaint, Par. 8; Par. 2; Answer, Par. 3. 1).

II. Nature of Interstate Trade and Commerce Involved

3. The Northern Pacific Railroad Company, the predecessor of Northern Pacific (hereinafter referred to as the Railroad Company), was a land grant railroad, which was chartered by Congress in 1864 to construct a railroad from Lake Superior to Puget Sound with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made to the Railroad Company by the Act of Congress of July 2, 1864. This grant consisted of every alternate section of public land, not mineral, in the amount of twenty sections per mile through territories and ten sections per mile through states on each side of the railroad line to be erected between Lake Superior and Puget Sound. The Railroad Company was privileged to select in lieu of the granted lands which should be found to have been previously granted, sold or occupied, alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad Company was privileged to select land suitable for agricultural purposes, provided land so selected was located within fifty miles of the railroad line. (Complaint, Par. 9; Answer, Par. 4).

4. By an Act of Congress of May 31, 1870 the Railroad Company was authorized to construct the main

line by way of the Columbia River to Puget Sound, and a branch across the Cascade Mountains to Puget Sound. By the Act of Congress of May 31, 1870, Congress made an additional grant of land to the Railroad Company in connection with the construction of the line between Portland, Oregon, and Puget Sound. This grant was made upon the same terms as the original grant made in 1864. The Acts of 1864 and 1870 also granted the Railroad Company a right-of-way over public lands of two hundred feet in width on each side of the definite location of the railroad line. (Complaint, Par. 10; Answer, Par. 4).

5. The Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls a total of 6,888.6 miles of railroad within the States of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon. The lines of Northern Pacific are substantially paralleled by the later constructed lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. (Complaint, Par. 11; Answer, Par. 5).

6. Under the land grants made by Congress Northern Pacific received 39,494,391 acres of land, of which all but approximately 100,000 acres was located in the states in which its lines now operate. (Complaint, Par. 12; Answer, Par. 6).

7. Prior to the commencement of this action, much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way purposes. This acreage includes,

in addition to land acquired by the Acts of 1864 and 1870, some land acquired by purchase and under other land grant Acts. Approximately 21,000,000 acres of land have been sold by the defendants without reservation of any kind. Of the acreage sold with mineral reservations, over 6,500,000 acres remain subject to such reservation. (Complaint, Par. 12; Answer, Par. 6).

8. The lands now owned by the defendants as well as lands formerly owned and sold by them are of different types. Some contain timber, iron ore, coal, oil and gas or other natural resources. Some of the lands have been used for grazing and agriculture, while others have been used for the location of industrial sites of various kinds. (Complaint, Par. 12; Answer, Par. 6).

9. Defendants are and have been engaged in the sale of land and of standing timber and in the leasing of land with rights to remove timber, oil, gas, metals, clay, coal and other natural resources. Defendants are and have been engaged in the leasing of land for grazing purposes pending the sale thereof and for industrial sites. Many of these grazing lands have been under lease for many years. (Complaint, Par. 12; Answer, Par. 6).

10. Defendants customarily include in their lease agreements provisions which require the lessee to make shipments over the lines of Northern Pacific, when reached via its lines and when service and rates are equal. These provisions, commonly known as traffic clauses or preferential routing agreements, have been included in almost all of the leases of land and in some of defendants' deeds of land and contracts relating to the sale of land and of timber. The minimal obligation

of all of these traffic clauses requires the grantee or lessee to route over the lines of Northern Pacific shipments of commodities produced by or on the land sold or leased, provided that neither a lower rate nor better service be available from a competing line. A large portion of the shipments of products affected by the traffic clauses has been and is shipped in interstate commerce. (Complaint, Par. 13; Answer, Second Defense; Response and Supplemental Response to Request for Admissions; Stipulation re Sources of Fact Information and Related Matters, Par. 7).

11. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber, lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, metals, minerals, animals and animal products. A variety of manufactured products, machinery, foodstuffs, mining and lumbering equipment and supplies, is shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located. (Complaint, Par. 14; Answer, Par. 8).

12. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce, including many of the commodities produced or derived from or distributed through the use of lands now or formerly owned by defendants, and many products manufactured from such commodities. Means of transportation other than the lines of defendant Northern Pacific are available for

the transportation of a substantial part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. (Complaint, Par. 15; Answer, Par. 9).

III. Use of Various Types of Traffic Clauses or Preferential Routing Agreements

A. Traffic Clauses Contained in Grazing Leases

13. Defendants' grazing leases contain a traffic clause providing in substance that the lessee shall ship over the lines of Northern Pacific all shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the lines of Northern Pacific or its connections, whenever its freight rates do not exceed the rates of other lines. (Answer, page 8).

14. In 1949 there were over 1,000 grazing leases containing such a traffic clause in effect, covering more than 1,000,000 acres of land. (Request for Admission IV; Response to Request for Admission IV).

B. Traffic Clauses Contained in Oil and Gas Leases

15. Defendants' usual form of oil and gas lease contains a traffic clause providing in substance that the lessee shall ship over such railroad line as Northern Pacific may designate all products obtained from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, or manufactures from said products insofar as such products or manufactures are destined for rail shipment, as well as all

incoming freight destined for use in the general territory of which the leased premises are a part, provided that the rates and service of the designated line shall equal those of any competing line. (Answer, page 8).

16. Defendants' usual form of oil and gas lease also provides that all oil controlled by the lessee produced from the leased premises and from other lands in the oil field of which the leased premises are a part, shall be delivered to a pipeline reaching the rails of Northern Pacific where such a pipeline is available and a price can be obtained for oil so delivered which is at least equal to the price then obtainable for oil produced on the leased premises and delivered to any other pipeline. (Answer, page 8).

17. Defendants' usual form of oil and gas lease also provides that should the lessee decide to construct or cause others to construct a refinery to refine the oil from the field of which the leased premises are a part, the refinery shall be located at some point on Northern Pacific's lines, provided such construction is as economical and feasible as construction on the lines of any other railroad company, and all of the products of the refinery shall be shipped over the lines of Northern Pacific and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale. (Answer, page 8).

18. Defendants have granted 50 oil and gas leases which contained one or more of the above described traffic clauses. In 1949 there were at least 19 oil and gas leases containing traffic clauses in effect, covering 135,-

000 acres of land. (Request for Admission V; Response to Request for Admission V).

C. Traffic Clauses Contained in Leases of Coal Lands

19. Defendants' leases of coal lands generally contain a traffic clause providing that the lessee shall ship over Northern Pacific lines all coal removed from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, insofar as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the leased premises are a part, provided Northern Pacific's rates and service equal those of any competing line. (Answer, page 9).

20. A traffic clause has been contained in 111 of defendants' leases of coal lands. At least 12 coal leases containing a traffic clause were in effect in 1949. (Request for Admission VI and Appendix VI; Response to Request for Admission VI; Supplemental Response to Request for Admission VI).

D. Traffic Clauses Contained in Leases of Land for the Removal of Iron Ore

21. Defendants' leases of land for the removal of iron ore generally contain a traffic clause providing in substance that the lessee, his successors and assigns shall ship over such line as Northern Pacific may designate all iron ore mined and shipped from the leased premises, as well as all treated products and concentrates mined from the leased premises, provided that rates, service and facilities equal those of any competing line. (Answer, page 9).

22. Defendants have granted 30 iron ore leases containing traffic clauses covering substantially 6,461 acres of land. In 1949 there were at least 16 leases of iron ore land containing such traffic clauses in effect, covering 5,261 acres of land. (Request for Admission VII; Response to Request for Admission VII).

E. Traffic Clauses Contained in Mineral Land Leases

23. Defendants' leases of mineral land for removal of minerals other than coal or petroleum contain a traffic clause which in substance requires the lessees to ship the particular mineral involved over the lines of Northern Pacific if rates, and in some instances service or facilities of Northern Pacific are equal to those of other lines. Some of the mineral land traffic clauses require the lessee to ship over Northern Pacific's lines products manufactured from the mineral removed from the land or minerals removed from adjacent lands then or thereafter controlled by the lessee. A number of the mineral land leases provide that the traffic clause shall be binding upon the lessee's successors and assigns. (Request for Admission III; Response to Request for Admission III; Supplemental Response to Request for Admission III, Exhibit C, and Appendix, pp. 37-43).

24. Defendants have granted 63 leases of mineral land containing traffic clauses, covering 42,466 acres of land. In 1949 there were at least 17 mineral land leases containing traffic clauses in effect, covering 6,810 acres of land. (Request for Admission III; Supplemental Response to Request for Admission III and Exhibit C).

F. Traffic Clauses Contained in Deeds and Contracts Relating to the Sale of Timberland

25. Defendants' contracts relating to sales of timberlands have contained a traffic clause requiring in substance that, rates being equal, the grantees and in some instances successors and assigns shall ship over the lines of Northern Pacific all logs, poles, lumber and other products manufactured from timber cut from the lands, and in some instances from other lands in the vicinity which the purchaser at any time may control, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the sale. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if the expense to the purchaser is not increased over the cost of shipment over another rail line. In some instances, the purchaser has been required to offer to sell the logs and poles produced from the sold lands to such companies as will agree to ship via Northern Pacific if rates are equal. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix pp. 1-36; Answer, page 10)

26. Defendants' sales of timberland generally have been conditioned upon a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Request for Admission I; Re-

sponse to Request for Admission I; Supplemental Response to Request for Admission I; Answer, page 10).

27. Out of 75 of defendants' contracts for the sale of timberland involving approximately 2,144,177 acres containing approximately 21,554,766,000 board feet of timber, at least 73 contracts covering 2,144,137 acres and containing 21,553,762,000 board feet of timber were subject to traffic clauses. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix, pp. 1-36).

G. Traffic Clauses Contained in Timber Sale Contracts

28. Defendants' timber sale contracts generally contain a traffic clause providing in substance that, rates being equal, the purchaser, and in some instances successors and assigns, shall ship over Northern Pacific lines all logs, poles, lumber and other products manufactured from the timber cut under the contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the contract. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if expense to the shipper is not increased above the cost of shipment over another rail line. (Answer, page 10; Request for Admission II; Supplemental Response to Request for Admission II).

29. Defendants' timber sale contracts generally contain a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the

traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Answer, page 10).

30. Out of 210 timber sale contracts involving 394,135 acres of land and more than 6,000,000,000 board feet of timber, at least 199 of such contracts included traffic clauses. In 1949 there were 31 timber sales contracts having traffic clauses in effect, covering 100,585 acres and 1,491,895,995 board feet of timber. (Request for Admission II; Response to Request for Admission II and Exhibit B; Supplemental Response to Request for Admission II and Appendix, pp. 1-36).

H. Traffic Clauses Contained in Industrial Leases Including Grain Elevator and Grain Warehouse Leases

31. Defendants at the time of suit had in effect 8,000 leases of sites used for various commercial and industrial purposes. All but about 400 of defendants' 8,000 industrial leases (other than grain elevator and grain warehouse leases) contain a traffic clause providing that rates being as favorable, the lessee shall do all transportation business over the lines of Northern Pacific. (Answer, page 12; Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

32. Of defendants' 8,000 industrial leases, 939 are for grain elevator and grain warehouse purposes. All of such grain elevator and grain warehouse leases contain a clause providing in substance that Northern Pacific shall have the exclusive right to carry all grain to be transported from the grain elevator. (Answer, page 13;

Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

33. Northern Pacific is a party to certain contracts with other railway companies which provide for joint operation of its lines of railway. There are 366 industrial leases in effect covering properties on the right-of-way for such lines of railway. Each of these industrial leases contains a traffic clause providing that, rates being as favorable, the lessee will do all transportation business over the lines of Northern Pacific. The lessees of these industrial sites affected by the joint operation agreements have been notified that the traffic clause is not effective against the joint operating railroad. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

34. In July 1913 all industrial leases of Northern Pacific's right-of-way between South Tacoma and Vancouver, Washington were cancelled and revised leases not containing any traffic clauses were substituted. No traffic clause has been incorporated in such industrial lease since 1913. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

35. At the request of certain lessees, no traffic clause was incorporated in 390 industrial leases in effect at the commencement of suit. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

IV. Conclusory Findings

36. The actual and potential commerce involved in defendants' traffic clauses or preferential routing agreements is very substantial. The amount of commerce in transportation involved by each of the categories of traffic clauses is not inconsequential or insubstantial.

37. Defendants, as sellers and as lessors, by reason of title in fee simple, have dominance in the lands now owned by them and had dominance in the lands formerly owned at the time of sale of such lands.

38. Defendants have used their dominance in the lands sold and leased to require purchasers and lessees to purchase and use Northern Pacific's transportation service, under the conditions stated in finding 10.

39. The traffic clauses contained in defendants' leases and the traffic clauses employed in connection with the sales of timberland and timber prohibit lessees, grantees and purchasers of Northern Pacific lands and timber from exercising a free choice in the selection of transportation routing in the shipment of commodities to and from the leased and sold lands, and from the land on which the timber sold under the timber sale contracts is located, under the conditions stated in finding 10.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the defendants.

2. There is no genuine issue as to any material fact with respect to any of defendants' traffic clauses except those contained in defendants' leases of land for use as industrial sites or for grain elevator or grain warehouse purposes.

3. For many years the defendants have been parties to contracts, agreements, arrangements and understandings in unreasonable restraint of commerce in the transportation of commodities by rail, truck and steamship lines, all in violation of Section 1 of the Sherman Act.

4. The amount of interstate trade and commerce which is restrained by the illegal contracts to which defendants are parties is substantial.

5. The plaintiff is entitled to judgment as a matter of law with respect to all of defendants' contracts and leases other than industrial leases.

GEO. H. BOLDT
United States District Judge

Dated: August 31, 1956

Presented by:
MARGARET H. BRASS
Attorney, Department of Justice

Approved as to form:
HAROLD G. BOGGS
Of Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, *Defendants*.

CIVIL No. 2277

PARTIAL FINAL JUDGMENT

This matter having come on for a hearing before the Court upon a motion of the plaintiff for summary judgment, counsel for the parties having been heard, and the Court having determined, upon consideration of the pleadings, admissions and stipulations on file, that there is no genuine issue between the parties as to any material fact with respect to all of the claims involved in this action other than claims based upon defendants' industrial leases (including grain elevator and grain warehouse leases), and the Court having filed its opinion herein on June 23, 1956, granting the motion for summary judgment with respect to all claims other than claims based on defendants' industrial leases, and it appearing to the Court that there is no just reason for delay in entering a final judgment in accordance with that decision on all of the multiple claims upon which summary judgment has been granted;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.

2. The defendants Northern Pacific Railway Company (Northern Pacific) and Northwestern Improve-

ment Company (Northwestern) have entered into contracts in restraint of, and have used their ownership and control of land to restrain interstate trade and commerce in the transportation of products in violation of Section 1 of the Act of Congress approved July 2, 1890, as amended, commonly known as the Sherman Act, 15 U.S.C. §1.

3. Every condition, agreement or understanding contained in defendants' lease agreements (except industrial leases, grain elevator leases and grain warehouse leases) or in defendants' contracts for or relating to the sale of timberland or timber, that the lessee or purchaser shall ship products produced on the land, or on adjacent lands, or manufactured from products so produced, over the lines of defendant Northern Pacific or over the lines of a railroad to be designated by Northern Pacific or shall ship incoming freight over the lines of Northern Pacific, are hereby adjudged unlawful and declared null and void.

4. The defendants Northern Pacific and Northwestern, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with said defendants who receive actual notice of this Final Judgment by personal service or otherwise are hereby perpetually enjoined:

(a) From enforcing or attempting to enforce any condition, agreement or understanding adjudged unlawful in paragraph 3 hereof.

(b) From entering into any contract, agreement or lease (except industrial leases, including grain elevator and grain warehouse leases) containing provisions

which are identical with or similar to those adjudged unlawful in paragraph 3 hereof, or from fixing a price or rental for the sale or lease of land upon the condition, agreement or understanding, directly or indirectly, that the purchaser, assignee, vendee, lessee, or sublessee shall ship products on or from the land, or commodities manufactured from such products, over the lines of Northern Pacific or the lines of any other carrier, or shall ship incoming freight over the lines of Northern Pacific.

(c) From making or carrying out contracts, agreements or understandings having the purpose or effect of continuing, reviving or renewing any contract provision adjudged to be unlawful by paragraph 3 of this Final Judgment.

(d) From requiring any purchaser or lessee of land (except a lessee under an industrial lease, grain elevator lease or grain warehouse lease) or purchaser of timber to make reports of the amount or nature of shipments made by such purchaser or lessee over the lines of Northern Pacific or any other carrier, or to keep records of such shipments, or to permit defendants to have access to any records kept of such shipments.

5. Within 60 days after the entry of this Final Judgment, defendants shall, in writing, fairly advise each person with whom they, or either of them, have a contract containing any condition, agreement or understanding adjudged to be illegal in paragraph 3 hereof of the substantive terms of this Final Judgment. Defendants shall file with the Court proof of compliance with this paragraph.

6. The defendants shall use all reasonable efforts to ascertain the identity of all purchasers or sublessees from purchasers or lessees of Northern Pacific with whom defendants, or either of them, have or had a contract containing any condition, agreement or understanding adjudged illegal by paragraph 3 hereof, and within 120 days from the entry of this Final Judgment defendants shall serve written notice upon each of such purchasers or sublessees that the contracts are to that extent illegal, null, void and unenforceable. Defendants shall file with the Court proof of compliance with this paragraph.

7. For the purpose of securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of the Northern Pacific Railway Company and Northwestern Improvement Company, and subject to any legally recognized privilege, be permitted:

(a) Access during the office hours of said corporate defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said corporate defendants relating to any matters contained in this Final Judgment;

(b) Subject to the reasonable convenience of said corporate defendants and without restraint or interference from defendants, to interview officers or employees

of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Paragraph 7 shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

8. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Let this partial final judgment be entered.

Done this 31st day of August, 1956.

GEO. H. BOLDT, *Judge*.

Presented by:

MARGARET H. BRASS
Attorney, Department of Justice

Approved as to form:

HAROLD G. BOGGS
Of Counsel for Defendants

APPENDIX B

Section 1 of the Sherman Act (26 Stat. 209, 15 U.S.C. 1), as amended:

"§1. *Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty*

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each

other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693."

Office - Supreme Court, U.S.
FILED
SEP 23 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957
No. 59

NORTHERN PACIFIC RAILWAY COMPANY and
NORTHWESTERN IMPROVEMENT COMPANY,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR APPELLANTS

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the Western District of Washington, Northern Division (R. 184), is reported at 142 Fed. Supp. 679. Transcript of the court's oral decision denying appellant's motion for reconsideration is at R. 210.

JURISDICTION

This suit was brought on May 26, 1949, under Section 4 of the Act of Congress of July 2, 1890 (26 Stat. 209, Title 15 U.S.C., Sec. 4), as amended, commonly known as the Sherman Act, to prevent and restrain alleged violations by appellants of Sections 1 and 2 of said Act. The judgment of the District Court was entered on August 31, 1956 (R. 194) and the notice of appeal was filed in that court on October 23, 1956 (R. 215-218). This court noted probable jurisdiction of the appeal on January 21, 1957 (R. 219). The jurisdiction of this court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823 (15 U.S.C. 29) as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869. The following decisions sustain the jurisdiction to review the Partial Final Judgment: *Associated Press* v. *United States*, 326 U.S. 1; *International Salt Co.*, v. *United States*, 332 U.S. 392; *Sears, Roebuck & Co.* v. *Mackey*, 351 U.S. 427; *Cold Metal Process Co.* v. *United Engineering Co.*, 351 U.S. 445.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether agreements which a railroad company and its subsidiary land company customarily include in contracts for the sale of their timber lands or timber and in leases of their lands, that the purchaser or lessee will ship over the lines of the railroad company, where the destination can be reached via its lines, all traffic incident to his use of the land, provided its rates and service are equal to those of any competing line, are (except in the case of industrial leases) *per se* unreasonable restraints of commerce in trans-

portation in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C., §1) where, in consequence of Government land grants in aid of construction of the railroad, the companies own lands and reserved mineral rights aggregating several million acres scattered through six states and the actual or potential interstate commerce in transportation of commodities from the properties subject to such agreements is substantial but there is no evidence that the companies have any monopoly of any type of lands or timber or other natural resources in any area or that they have any monopoly power or dominance over any market for lands or timber or other natural resources of any kind.

2. Whether in such a case issues of fact raised by the pleadings as to the economic consequences of said agreements, their effects upon purchasers and lessees, their effects upon competition, and their reasonableness under all the circumstances, constitute material issues of fact for trial.

STATUTES INVOLVED

The pertinent provisions of Section 1 of the Act of July 2, 1890, 26 Stat. 209 (15 U.S.C. 1, 2), commonly known as the Sherman Act, are as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *."

STATEMENT

Nature of the Case and Proceedings Below

This is a civil suit instituted by the United States on May 26, 1949, under Section 4 of the Sherman Act, to enjoin alleged violations of Sections 1 and 2 of that Act. The complaint (R. 1-12) alleged that appellant Northern Pacific Railway Company, a land aided common carrier railroad corporation, and its wholly owned subsidiary, Northwestern Improvement Company, a Delaware corporation, which had acquired certain lands of the Railway Company, had been and were engaged in the making of contracts and in a conspiracy to make contracts to restrain unreasonably, and had conspired and combined to monopolize and had attempted to monopolize, the interstate trade and commerce involved in the business of transporting commodities and products shipped from and in transporting commodities and products shipped to persons and concerns occupying lands sold or leased to them by appellants, by requiring grantees of rights in or to the use of such lands to agree to ship or have shipped over the lines of Northern Pacific any and all products of whatever nature coming from the land and by threatening to refuse and refusing to grant rights in or to the use of their lands to grantees who refused to comply with such shipping requirements. In brief, it was alleged that the exaction of such shipping requirements had secured to Northern Pacific a substantial monopoly of the transportation of the products and commodities coming from and produced on lands of appellants and other lands, had deprived grantees of rights and interests in such lands of a free choice as to both the means of transportation to be used and of markets in which to sell commodities and pro-

ducts coming from such lands, had deprived potential buyers of products and commodities produced on such lands, who buy and sell in markets not served by lines of the Northern Pacific, of the right to purchase such products and commodities in a free market, and had deprived competing railroads and competing motor truck and steamship lines of an opportunity to compete in an open market for the business of transporting products and commodities coming from said lands.

Appellants in their answer admitted that they customarily included shipping agreements of various types in most of their leases of lands and contracts for the sale of timber, and in some instances in connection with the sale of timber lands, but alleged that in substantially all cases such shipping agreements (hereinafter called "traffic clauses") had been subject to provisos which fully preserved the rights of grantees and lessees to use the services of other transportation agencies whenever their rates or services were more favorable than those of Northern Pacific, and they denied that they had done any of the other things alleged in the complaint or that any conduct on their part prevented or unreasonably restrained competition or had or could have any of the harmful effects alleged (R. 12-22).

On July 31, 1953, appellee moved for summary judgment in favor of the United States on the ground that no issue as to a material fact was presented and that on the undisputed facts it was entitled to judgment as a matter of law (R. 144). The contention of the Department of Justice was that appellants' dominance of their own lands as a tying commodity or device had been used to foreclose or restrict competition in transportation service to and from the land, the commerce in which was not inconsequential or insub-

stantial in amount, and that accordingly the traffic clauses constituted restraints of trade which were unreasonable *per se* and therefore violative of Section 1 of the Sherman Act under principles announced in the so-called "tying cases" (R. 186, 187). The motion was heard before Judge George H. Boldt on February 17, 1956, on a record consisting of the complaint and answer, appellants' response and supplemental response to appellee's request for admissions under Rule 36 of the Rules of Federal Procedure, stipulations of the parties, and the depositions of seventy-two witnesses, taken by appellants.

The court's opinion, holding all of the traffic clauses in question, excepting those in the industrial leases (including grain elevator and grain warehouse leases), to be violative of Section 1 of the Sherman Act under the principles enunciated by this Court in the "tying" cases, was filed June 25, 1956 (R. 184). Findings of Fact and Conclusions of Law were made by the court and filed August 31, 1956 (R. 199), and Partial Final Judgment was entered on the same day (R. 194). Following the filing of Judge Boldt's opinion, appellants, on August 8, 1956, filed their motion for reargument and reconsideration, on the ground that the decision of the court was contrary to and in conflict with the principles restated and clarified in *United States of America* v. *E. I. du Pont de Nemours & Company*, 351 U.S. 377, decided June 11, 1956 (R. 192). On August 31, 1956, the motion was orally argued before Judge Boldt and denied (R. 210-215). The court thereafter revised his decision of June 25, 1956, so as to include a statement of his views with respect to the inapplicability of the du Pont case (R. 190).

Appellants' Land Holdings

Under the grants made by Congress by the Act of July 2, 1864 (13 Stat. 365) and the Joint Resolution of May 31, 1870 (16 Stat. 378), appellant, Northern Pacific Railway Company, acquired approximately 39,400,000 acres of land located in the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon, the states through which its railroad was constructed and now operates. The grant (besides the grant of a 400-foot right of way) consisted of every alternate section of public land, not mineral, in the amount of twenty sections per mile through territories and ten sections per mile through states on each side of the railroad line as definitely located. There was also granted the right of selection of lieu lands in two belts lying, respectively, ten and twenty miles beyond the limits of the original grant to make good lands in place limits found to have been previously granted, sold or occupied by settlers, and, as indemnity for mineral lands, the right to select other lands suitable for agricultural purposes located within fifty miles of the railroad (Findings 3, 4, 5 and 6; R. 200-201). Since the grant was of alternate odd-numbered sections, both in place and indemnity limits, lands acquired or selected under the grants could be as far as sixty miles away from the railroad line where it passed through territories, and as far as forty miles away (or fifty miles in the case of mineral indemnity lands) where it passed through states.

Of the 39 odd million acres of land acquired under the land grant, there remained in appellants' ownership at the time the complaint was filed approximately 2,700,000 acres (not including right of way) and approximately 6,500,000 acres of reserved mineral rights in land previously sold to pur-

chasers (Finding 7; R. 201). The lands sold and those remaining in appellants' ownership are of many different types, some being used for grazing and agriculture, some containing timber, and some containing iron ore, coal, oil and gas, or other natural resources (Finding 8; R. 201). There was no evidence before the court as to the particular location of any of these lands or as to the availability to prospective purchasers or lessees of other similar lands in the same general areas, except that the legal descriptions of the lands in Montana and Washington subject to grazing leases held by witnesses whose depositions were taken were included in the record (R. 155-183), and except that approximately 8,000 acres of iron ore lands owned by appellants, of which only 160 acres were producing, were stated to be on the Cuyuna iron ore range in the vicinity of Brainerd, Minnesota (John Hughes deposition pp. 12, 13).

Appellants' ownership of standing timber in the states of Montana, Idaho and Washington in the period between 1935 and 1942, when a nationwide inventory of merchantable timber was made by the Forest Service, compared as follows with the total estimated volume of timber in these states in all ownerships:

	All Ownerships Vol. M. Bd. Ft.	Appellants' Ownership Vol. M. Bd. Ft.	Appellants' Percent of All Ownerships
States:			
Montana	43,929,590	2,627,002	5.98
Idaho	37,207,973	2,148,253	5.77
Washington	243,797,385	10,944,390	4.49
	324,934,948	15,719,645	4.84

(Affidavit of R. G. Lindgren; R. 149-151).

Appellants Use of Traffic Clauses

Appellants are and have been engaged in the sale of land and of standing timber, in the leasing of land with rights to remove timber, oil, gas, metals, clay, coal or other natural resources, and in the leasing of land for grazing purposes, pending the sale thereof. They also engage in the leasing of sites on or adjacent to the right of way for industrial purposes (Finding 9; R. 201). Their leases and some of their timber land and timber sale contracts customarily contain traffic clauses as hereinafter more particularly stated. Of the approximately 37 million acres of land which appellants had sold up to 1949, however, over 90 % were conveyed without obtaining any routing commitment (John Hughes deposition, p. 21). Between 1940 and 1951, the appellants sold 2,787,961 acres of grazing lands in the territory between Livingston, Montana, and Dickinson, North Dakota (Henry Berg deposition, p. 5). No routing clauses are included in conveyances of grazing lands (John Hughes deposition, p. 21). Appellants have always followed the policy of selling grazing land whenever they could find a purchaser, in preference to leasing it (Hughes deposition, p. 25).

A large portion of the shipments of products of lands affected by the traffic clauses has been and is made in interstate commerce (Finding 10; R. 201, 202). Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial part of such commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numer-

ous motor freight lines and steamship lines (Finding 12; R. 202).

Over 1,000 grazing leases, covering more than 1,000,000 acres of land, were in effect in 1949, containing a traffic clause requiring all shipments of livestock, wool, mutton or beef destined for points on the lines of Northern Pacific or its connections, to be shipped Northern Pacific whenever its freight rates do not exceed the rates of other lines (Findings 13 and 14; R. 203).

Oil and gas leases, of which at least 19 covering 135,000 acres of land, were in effect in 1949, contain traffic clauses giving Northern Pacific the routing of all traffic destined for rail shipment, provided that its rates and service shall equal those of any competing line, and requiring delivery of all oil to a pipe line reaching the rails of Northern Pacific where such a pipe line is available and a price can be obtained for oil so delivered which is at least equal to the price then obtainable for oil delivered to any other pipe line (Findings 15, 16, 17, 18; R. 203, 204).

Leases of coal lands, of which at least twelve were in effect in 1949, generally contain a traffic clause providing for all shipments of coal and incoming freight to be via Northern Pacific, provided Northern Pacific's rates and service equal those of any competing line (Findings 19, 20; R. 204).

Iron ore leases, of which at least sixteen, covering 5,261 acres of land were in effect in 1949, contain a traffic clause giving Northern Pacific the routing of all ores and concentrates, provided that rates, service and facilities equal those of any competing line (Findings 21, 22; R. 205).

Mineral land leases, of which at least seventeen, covering 6,810 acres of land were in effect in 1949, contain a traffic

clause requiring shipment of the products via Northern Pacific, provided that its rates, and in some instances its service or facilities are equal to those of other lines (Findings 23, 24; R. 205).

Timber sale contracts, of which thirty-one, covering 100,585 acres and 1,491,895,995 board feet of timber, were in effect in 1949, generally (although not in all cases) contain a traffic clause providing in substance that, rates being equal, the purchaser, and in some instances its successors and assigns, shall ship over Northern Pacific lines all logs, poles, lumber and other products manufactured from the timber cut under the contract or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the contract (Findings 28 and 30; R. 207).

Traffic clauses in contracts relating to the sale of timber lands are conditional upon "rates being equal" (Finding 25; R. 206).

In Finding 27 (R. 206) the court stated that "out of seventy-five of defendants' contracts for the sale of timber land involving approximately 2,144,177 acres containing approximately 21,554,766,000 board feet of timber, at least seventy-three contracts covering 2,144,137 acres and containing 21,553,762,000 board feet of timber were subject to traffic clauses." This statement does not refer to contracts in effect in 1949, but refers to all sales of timber land made by appellants and their predecessor Northern Pacific Railroad Company, since 1887 (Exhibit A to Response To Request for Adminssions; R. 89, 90). Included in these sales is a sale made January 3, 1900, to Frederick Weyerhaeuser, covering 900,000 acres and 14,981,000,000 board feet (R. 90). The supplemental response to request for admissions shows

that this contract contained traffic clause Form 35 (R. 104), which limited the shipping obligation to a period of fifteen years from the date of the contract and therefore expired in 1915 (R. 133). There is nothing in the record to show how much, if any, of the standing timber covered by the timber land sales during the period from 1887 through 1949 remained uncut in 1949. In consequence it cannot be assumed that in 1949 any very large amount of timber land theretofore sold by appellants was affected by these traffic clauses.

No evidence whatever was before the court as to any harmful effects of appellants' traffic clauses upon competition, or as to any ill effects actually suffered by purchasers and lessees of appellants' lands or by others. On the contrary, the testimony of seventeen holders of grazing leases, whose depositions were taken by appellants, was that the routing clause in their leases had never caused them any trouble and never seemed to them unreasonable. For example, a witness who had been a member of the Montana Wool Growers Association since 1931, a trustee since 1938, and President in 1947 and 1948, testified that the Association holds meetings annually, attended by 400 to 800 of the members, at which grievances are aired, and that he had never heard of a complaint being submitted to the Association about the routing clauses (William Denecke deposition, pp. 15, 17).

Opinion of the Court Below

The District Court agreed with the contentions of the Department of Justice that "defendants' dominance of N.P. land as a tying commodity or device has been used to foreclose or restrict competition in the tied commodity, trans-

portation service to and from the land, the commerce in which is not 'inconsequential or insubstantial' in amount" (R. 187) and held that "On the established facts all of the traffic clauses in question excepting those in the industrial (including grain elevator and grain warehouse) leases, are shown to be violative of Section 1 of the Sherman Act under the principles enunciated in the tying cases" (R. 192). As to the industrial and grain elevator and grain warehouse leases he found that "such lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity", and he held that "whether under such circumstances the industrial leases involve distinct and separate tied and tying commodities, as held required and found lacking in *Times-Picayune* v. *United States*, *supra*, presents at least a question of fact which precludes summary judgment and will require trial as to all issues pertaining to the industrial leases" (R. 191, 192).

With respect to appellants contention that summary judgment was unauthorized because market domination of the tying device was not established, there being no evidence as to "the proportion of NP lands of various types to the total of the lands of the same types sold and leased in the area of defendants' operations" he held that "The tying commodity need only be the particular property or product to which forced purchase of the second commodity is tied" (R. 189). He said (R. 190):

> "The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic

clauses in question on the grantees and lessees of the land".

In support of his view that absolute ownership of the particular property employed as the tying device was all that needed to be shown to render illegal *per se* under Section 1 of the Sherman Act a tying arrangement affecting a not insignificant or insubstantial amount of commerce in the tied commodity, he cited *International Salt Co.* v. *United States*, 332 U.S. 392, and the statement with respect thereto in *Standard Oil Co. of Calif. et al* v. *United States*, 337 U.S. 293, that in *International Salt* (which involved leases of patented machines requiring use therein of salt purchased from the lessor only): "It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition" (R. 190).

Judge Boldt was of opinion that the market dominance required as the first element of an illegal tying device is not synonymous with the monopoly power that is a requisite for violation of paragraph 2 of the Sherman Act (R. 190). He said that if it were held to be synonymous "there would never be any occasion for the doctrine of the tying cases because if you were considering an established monopoly you wouldn't have to be concerned about what the monopolist did with it" and that "The monopoly in and of itself would be unlawful, and whether used for tying purposes or otherwise would be of no concern" (R. 211). He said further: "If the facts show that you have absolute fee title over vast quantities of land, that shows the dominance right there" (R. 215).

In so ruling, we think the court misunderstood and misapplied the doctrine of the "tying" cases, which, as we understand them, make illegality of tying arrangements under Section 1 of the Sherman Act dependent not only upon the amount of commerce affected but upon the wielding of *monopolistic power* over purchasers or lessees of the tying device and therefore require proof of the existence of a monopoly of the relevant market for such device, irrespective of the lawfulness or unlawfulness of such monopoly.

SUMMARY OF THE ARGUMENT

Summary judgment was erroneously granted, for, in any view of the case, material issues of fact for trial were presented. *Per se* illegality of the traffic clauses under the doctrine of the "tying" cases depended upon proof that appellants held a position of dominance in the relevant land markets and that they used that dominance to *exclude* competitors from the market for transportation of the traffic generated on such lands. Neither proposition could properly be inferred from the admitted facts. And since the traffic clauses leave purchasers and lessees free to use the services of other transportation agencies, where rates are less or service better, they are non-exclusive in character and prima facie reasonable. Their alleged harmful effects upon competition and upon purchasers and lessees and others were clearly issues of fact for trial.

In holding that, under the rule of the "tying" cases, only market dominance of the particular property used as the tying device need be shown, and that "If the facts show that you have absolute fee simple title over vast quantities

of land, that shows the dominance right there" the court misunderstood and misapplied the rule. It is not the exercise of mere ownership powers to secure benefits in another line of commerce that the Sherman Act condemns. It is "the wielding of monopolistic leverage" in one market to restrict competition in another. See *United States* v. *Griffith*, 334 U.S. 100, 107; *Times-Picayune Pub. Co.* v. *United States*, 345 U.S. 594, 611. If the rule were as applied by the court below, all distinction between Section 1 of the Sherman Act and Section 3 of the Clayton Act would be obliterated, for obviously no tying arrangement can exist without ownership and hence "market control" of "the particular property or product to which forced purchase of the second commodity is tied." Suppression of competition or other harmful economic consequences cannot be presumed to result from otherwise reasonable agreements with respect to commercial dealings merely because they are attached as conditions to the sale or lease of land, in the absence of any showing that purchasers or lessees are substantially restricted to the lands offered by the seller or lessor.

Whether the requisite leverage over purchasers or lessees is possessed by a seller or lessor is certainly a question of fact, where neither patent nor copyright furnishes the requisite power. Market dominance or monopolistic leverage must then be appraised in terms of the competitive market for the tying commodity or property and the relation of what the seller or lessor controls to the total supply available in that market. See *Standard Oil Co.* v. *United States*, 337 U.S. 293, 307; *Times-Picayune Pub Co.* v. *United States*, *supra*, p. 611; *United States* v. *du Pont & Co.* 351 U.S. 377, 392, 393, 404. The problem can be no different where the charge is illegal use of lawfully acquired monopoly power

than where it is illegal monopolization, as in the *du Pont case,* for the possession of monopoly power is requisite in either case.

The mere quantity of appellants' lands in the aggregate furnished no justification for the assumption that appellants possessed monopolistic leverage over users of land or transportation services. These lands are the remnants of a land grant consisting of alternate odd-numbered sections of land located in belts fifty to sixty miles wide on either side of the line of railroad in seven states and their character and the uses to which they are adapted vary with the country traversed by the railroad. Little is shown as to their particular location and nothing appears as to the supply or demand for lands of the same character in the respective areas in which they lie. Whether any of these lands are unique in character or in any case the only land that would satisfy the needs of the purchaser or lessee, as argued by the Department of Justice, certainly depends upon proof and cannot be assumed or inferred. Appellants' lands cannot be aggregated for the purpose of determining the strength of the leverage appellants may have over purchasers or lessees, for a monopoly of lands of one kind in one area could not affect the market for lands of a different kind in another area. For example, control of a majority of the iron ore bearing lands on the Cuyuna iron range in Minnesota, if appellants owned a majority thereof, could not conceivably enable them to secure any traffic in forest products from western states, or vice versa.

Freedom to use the services of competing lines where rates or services are more favorable makes appellants' traffic clauses non-exclusive and prima facie reasonable. They are essentially different in this respect from the "Lixator" pro-

vision held ineffectual to "avoid the stifling effect" on competition of the tying agreements considered in *International Salt Co. v. U.S.*, 332 U.S. 392, 397, for railroad rates must be published in filed tariffs on statutory notice, open to all shippers of the same commodity between the same points and reasonably related to rates from other points. Appellant Northern Pacific cannot make reduced rates for only the traffic of purchasers or lessees of its lands. If it wishes to meet the lower rate of a competing rail line or truck line or barge line in order to retain the traffic of a purchaser or lessee of its land, it must publish the rate for the benefit of all shippers of the same commodity between the same points. The traffic clauses accordingly allow full reign to competition in the matter of rates and they only control the shipper's choice between competing transportation agencies where it is a matter of indifference to him which he shall select. Their primary function is to take the place of solicitation of the traffic of those using appellants' lands to carry on their businesses.

It cannot be assumed that the provisos to which appellants' traffic clauses are subject are ineffectual to avoid the stifling effect of the traffic clauses on competition, for many of the affected lands are tributary to the lines of other railroads, making their services more favorable to the purchaser or lessee, and the services of appellant Northern Pacific may be less favorable for other reasons, or its rates may be higher.

The difficulties encountered by the railroads in meeting the rates and service of truck lines, water lines and pipe lines are matters of common knowledge. See the Report of the Presidential Advisory Committee on Transport Policy and Organization, April 1955, p. 1, and the 70th Annual Report of the Interstate Commerce Commission, pp. 1 and 2.

Preferential routing clauses, such as are here in issue, have been many times before the courts and have been uniformly upheld as reasonable and neither in restraint of trade nor otherwise unlawful. See, for example, *Stephenson v. St. Louis Southwestern Ry. Co. of Texas*, 181 S.W. 568; *Southwestern Lumber Co. of New Jersey v. Kerr*, 11 F. Supp. 253, aff'd 78 F(2d) 348; Cert. Den. 296 U.S. 611; *Cascade Timber Co. v. Northern Pacific Ry. Co.*, 28 Wash. (2d) 684, 184 P.(2d) 90; *Northern Pacific Ry. Co. v. St. Paul & Tacoma Lumber Co.*, 4 F.(2d) 359. Until harmful effects on competition or on users of transportation or others are factually established, appellants' traffic clauses cannot be held violative of Section 1 of the Sherman Act.

ARGUMENT

I

Summary Judgment Was Unauthorized

On reason and authority we think two propositions are sound and decisive of this appeal: (1) illegality of a tying arrangement under Section 1 of the Sherman Act, where neither patents nor copyrights supply the requisite market control, must be predicated upon a showing of possession and use of *coercive* power over users of the tied product resulting from control of the supply available in the market of something else required by such users in the conduct of their businesses; (2) in the absence of such coercive power, agreements obtained from shippers by a regulated transportation company, giving it priority over competitors in the transporta-

tion of the shippers' freight where rates and service are equal, are prima facie reasonable because they neither "foreclose competitors" from the market nor discourage competition based on merit, and they obviously do not tend to restrict production, raise prices or otherwise control the market for transportation to the detriment of the public. If these propositions are sound, summary judgment was erroneously granted in this case, for neither control by appellants of the supply of lands of any type upon any relevant market nor suppression of competition or other harmful economic consequences resulting from appellants' use of traffic clauses was factually established. We proceed, therefore, to a discussion of these points.

A. Illegality of a tying arrangement under Section 1 of the Sherman Act, where neither patents nor copyrights supply the requisite market control, must be predicated upon a showing of possession and use of coercive power over users of the tied product resulting from control of the supply available in the market of something else required by such users in the conduct of their businesses.

Only unreasonable restraints are prohibited by the Sherman Act. *United States* v. *Standard Oil Co.*, 221 U.S. 1. And, as said by this court in *Associated Press* v. *United States*, 326 U.S. 1, at page 26, whether a restraint is unreasonable "depends, in essence, on the significance of the restraint in relation to a particular industry." The forbidden restraints are those which limit "free competition in business and commercial transactions" and thereby tend "to restrict production, raise prices or otherwise control the market

to the detriment of the purchasers or consumers of goods and services." *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 493. Contracts, combinations or conspiracies which directly restrict production, fix prices or otherwise control the market, to the detriment of purchasers or consumers, or which inevitably tend to do any of those things, are accordingly *per se* unreasonable restraints of trade or commerce and illegal. But tying arrangements are not necessarily of this character.

By Section 3 of the Clayton Act (Title 15, U.S.C.A. §14) Congress expressly outlawed exclusive dealing contracts and tying arrangements in connection with leases or sales of "goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented," where the effect of such contract or arrangement "may be to substantially lessen competition or tend to create a monopoly in any line of commerce." But neither exclusive dealing contracts nor tying arrangements were thereby made *per se* illegal. Proof of the effect thereof on competition is still necessary for a finding of illegality, although such effect may be inferred from proof either of market control of the "tying" device or substantiality of the commerce affected. *Standard Oil Co. v. United States*, 337 U.S. 293, 299, 314.

The *per se* unreasonableness of conditioning the sale or lease of a *patented* machine upon a requirement that only articles controlled by the seller or lessor be used therein was announced by this Court in *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502. The Court held that no right to control by restriction the materials used in operating a patented machine could be "derived from or protected by the patent law" (p. 513) and it said that to enforce the restriction "would be to create a monopoly in the manu-

facture and use of motion picture films." (p. 518) In all subsequent patent infringement cases of that type the Court has consistently held that "the owner of a patent may not employ it to secure a limited monopoly of an unpatented material used in applying the invention." The cases were collected in *Mercoid Corporation* v. *Mid-Continent Investment Co.*, 320 U.S. 661, 664, 665, where the Court said: "In those cases both direct and contributory infringement suits were disallowed on a showing that the owner of the patent was using it 'as the effective means of restraining competition with its sale of an unpatented article'." Then in *International Salt Co.* v. *United States*, 332 U.S. 392, the Court held such a patent tying arrangement, affecting a substantial amount of commerce in the tied product, *per se* unlawful, not only under Section 3 of the Clayton Act, but also under Section 1 of the Sherman Act, because "Not only is price-fixing unreasonable, *per se*, * * * but also it is unreasonable, *per se*, to foreclose competitors from any substantial market. * * * The volume of business affected by these contracts cannot be said to be insignificant or insubstantial and the tendency of the arrangement to accomplishment of monopoly seems obvious." (P. 396).

Necessity in Sherman Act cases that the wielding of monopolistic leverage be shown

Tying arrangements such as we have here, which are not within the purview of Section 3 of the Clayton Act, because they do not involve dealings in "goods, wares, merchandise, machinery, supplies, or other commodities," are illegal under the Sherman Act only if *both* "monopolistic position in the market for the 'tying' product" *and* restraint of "a sub-

stantial volume of commerce in the tied product" are established, because under that Act a restraint must be shown to be unreasonable and unreasonableness cannot logically be inferred from the amount of commerce affected unless suppression of competition tending to monopoly or other harmful economic consequences also appears. This was clearly stated by this Court in *Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 609, as follow:

> "From the 'tying' cases a perceptible pattern of illegality emerges: When the seller enjoys a monopolistic position in the market for the 'tying' product, *or* if a substantial volume of commerce in the tied product is restrained, a tying arrangement violates the narrower standards expressed in Section 3 of the Clayton Act, because from either factor the requisite potential lessening of competition is inferred. And because for even a lawful monopolist it is 'unreasonable *per se*, to foreclose competitors from any substantial market' a tying arrangement is banned by Section 1 of the Sherman Act whenever *both* conditions are met."

Obviously, competitors are not *necessarily* foreclosed from any substantial market by a tying arrangement obtained without economic coercion of the purchaser or lessee, merely because the amount of commerce affected is substantial; for the arrangement then may be merely the legitimate result of competition or of normal commercial dealings. Especially must this be so where, as here, the arrangement leaves the purchaser or lessee free to buy the goods or services of others, where it is to his advantage to do so. Unreasonableness of the restraint in such cases, if it be unreasonable, must be found in the use of *coercive* power over purchasers or users of the tied product or service to gain an unfair advantage over competitors. Such coercive power can only

exist when the seller or lessor has a monopolistic position in the market for the "tying" thing, i.e. control of all or a major portion of the supply of things of that kind available in the market to which the purchaser or lessee must resort in the transaction of his business.

The words "monopolist" and "monopolistic position" used by this Court were no chance expressions. In all of the tying cases and exclusive dealing cases in which neither patents nor copyrights supplied the requisite market control, this Court, in determining whether the seller or lessor had the necessary "dominance" of the "tying" thing, has applied the same tests as are requisite to determine the issue of unlawful monopolization and has clearly indicated that by "dominant position", "dominance of the market", "market control" and like expressions, it means "monopoly" in the sense in which that term is ordinarily understood.

Thus, in *United States Shoe Machinery Corp.* v. *United States*, 258 U.S. 451, where the evidence showed that defendant controlled more than 95% of the business of supplying shoe machinery in the United States, the Court said, in holding certain restrictive provisions in leases of United's machines to be violative of Section 3 of the Clayton Act:

> "That such restrictive and tying agreements must necessarily lessen competition and tend to monopoly is, we believe, equally apparent. When it is considered that the United Company occupies a dominating position in supplying shoe machinery of the classes involved, these covenants, signed by the lessee and binding upon him, effectually prevent him from acquiring the machinery of a competitor of the lessor except at the risk of forfeiting the right to use the machines furnished by the United Company, which may be absolutely essential to the prosecution and success of his business." (pp. 457, 458)

In *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, where a combination of motion picture exhibitors and distributors operating theaters in Tennessee, Alabama and Kentucky was held violative of Section 1 of the Sherman Act, the Court said (p. 181):

> "The crux of the government's case was the use of the buying power of the combination for the purpose of eliminating competition with the exhibitors and acquiring a monopoly in the areas in question. There was ample evidence that the combination used its buying power for the purpose either of restricting the ability of its competitors to license films or of eliminating competition by acquiring the competitor's property or otherwise. For example, the defendants would insist that a distributor give them monopoly rights in towns where they had competition or else defendants would not give the distributor any business in the closed towns where they had no competition."

In *United States* v. *Griffith*, 334 U.S. 100, where Griffith tied its theaters in closed towns where it had no competition to its theaters in towns where it had competition in order to obtain certain exclusive privileges from motion picture distributors, the Court held the practice violative of Section 1 of the Sherman Act, and said that "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor is unlawful." (p. 107) That the Court meant monopoly in the ordinary sense is evident from the following quotation from the opinion in that case:

> "A man with a monopoly of theaters in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a city where he has competitors, he is employing his monopoly power as a trade weapon against

> his competitors. It may be a feeble, ineffective weapon where he has only one closed or monopoly town. But as those towns increase in number throughout a region, his monopoly power in them may be used with crushing effect on competitors in other places. * * * When the buying power of the entire circuit is used to negotiate films for his competitive as well as his closed towns, he is using monopoly power to expand his empire." (pp. 107-108)

The point is made even clearer by the cases in which the requisite market dominance was found lacking. In *Standard Oil Co. of California* v. *United States*, 337 U.S. 293, where Standard's exclusive dealing contracts with independent dealers were held violative of Section 3 of the Clayton Act, because of the substantiality of the commerce affected, it appeared that Standard was the largest seller of gasoline in Arizona, California, Idaho, Nevada, Oregon, Utah and Washington but that between1936 and 1946 its share of the total taxable gallonage sold in these states remained practically constant and that in 1946 it sold only 23% of the total. After noting that all but one of the later cases in which it had passed on the applicability of Section 3 of the Clayton Act "regarded domination of the market as sufficient in itself to support the inference that competition had been or probably would be lessened" (p. 301), the Court held that Standard's share of the market would not warrant a finding of such market control (p. 302). Because the *International Salt case* turned on the use of patents as a tying device, it held that case not to be controlling on the issue before it. It said (p. 307):

> "A patent, moreover, although in fact there may be competing substitutes for the patented article, is at

> least *prima facie* evidence of such control. And so we could not dispose of this case merely by citing *International Salt Co.* v. *United States*, 332 U.S. 392."

Similarly, in *Times-Picayune Pub. Co.* v. *United States*, 345 U.S. 594, the Court observed that "Unlike other 'tying' cases where patents or copyrights supplied the requisite market control, any equivalent market 'dominance' in this case must rest on comparative marketing data" (p. 611) and it held that Times-Picayune's 40% share of the New Orleans newspaper advertising market was insufficient. It said (p. 612):

> "If each of the New Orleans publications shared equally in the total volume of linage, the Times-Picayune would have sold 33 1/3%; in the absence of patent or copyright control, the small existing increment in the circumstances here disclosed cannot confer that market 'dominance' which, in conjunction with a 'not insubstantial' volume of trade in the 'tied' product, would result in a Sherman Act offense under the rule of International Salt."

The Court's use of the phrase "market dominance" as the equivalent of the word "monopoly" is evident not only from its rejection of 40% control of the market as insufficient but from its unequivocal statement (p. 611) that "*the essence of illegality in tying agreements is the wielding of monopolistic leverage; a seller exploits his dominant position in one market to expand his empire into the next.*" (Italics ours.)

In the face of these decisions it is difficult to understand how the District Court could have thought that "the tying commodity need only be the particular property or product to which forced purchase of the second commodity is tied"; that "monopoly" and "market dominance" are not inter-

changeable terms, and that "unrestricted fee simple title to land vests in the owner absolute domination of the market in such land." Of course, the ownership of land, like the ownership of anything else, empowers the owner to determine whether or not he will sell or permit another to use his property, and hence enables him to name the terms on which he will sell or lease. But this does not enable him to sell or lease *on his own terms,* because he may be unable to find a purchaser or lessee willing to accept those terms. The "market" implies willing buyers as well as a seller and no one can be said to have "market control" or "dominance" of the market unless he can control *the price and terms which purchasers or users will pay or accept.* Ordinarily such control can exist only where the owner has a monopoly of something which others must have.

Ownership of property in itself confers no coercive power over others. But, if anything is clear from the "tying" cases, it is that *per se* unreasonableness in tying arrangements results from the use of *coercive powers* "to foreclose competition, to gain a competitive advantage, or to destroy a competitor." Nothing in these cases lends support to the idea that it is unreasonable *per se* for an owner of land to attach conditions affecting a substantial amount of commerce to the sale or lease of his land.

In the *Standard Oil Case,* 337 U.S. 293 at p. 312, this Court observed that in Section 3 of the Clayton Act Congress had set up "an express prohibition against a practice thought to be beyond the reach of the Sherman Act" and that it seemed hardly likely that "the necessity of meeting the same tests of detriment to the public interest" as the Sherman Act had been interpreted as requiring were thereby reestablished for Clayton Act cases. And in the *Times-Picayune case,* 345

U.S. 594, at pp. 608-609, as hereinbefore noted, the Court held that while illegality of a tying arrangement under Section 3 of the Clayton Act may be inferred when either monopolistic position in the market for the "tying" product or restraint of a substantial volume of commerce in the "tied" product appears, illegality under the Sherman Act can be inferred only when *both* conditions are met. This distinction between the two acts would be obliterated if the market control resulting from mere ownership of "the particular property or product to which forced purchase of the second commodity is tied" were all that needed to be shown in addition to substantiality of the commerce affected, as supposed by the court below. For obviously all tying arrangements necessarily involve absolute ownership of the "tying" thing.

The need for delimitation of the market

Since the exercise of coercive power resulting from market control of the tying thing is essential to a finding of illegality of a tying arrangement under Section 1 of the Sherman Act, the relevant market alleged to be dominated must be established and the defendant's control of the supply on that market must be ascertained. Thus, in the *Times-Picayune case*, 345 U.S. 594, at p. 610, the Court said, "Once granted that the volume of commerce affected was not 'insignificant or insubstantial,' the Times-Picayune's market position becomes critical to the case." With respect to the market, the Court said (p. 611):

> "The 'market' as most concepts in law or economics, cannot be measured by metes and bounds. Nor does the substance of Sherman Act violations typically depend on so flexible a guide. Section 2 outlaws monopolization of any 'appreciable part' of interstate com-

merce, and by §1 unreasonable restraints are banned irrespective of the amount of commerce involved. *Lorain Journal* v. *United States, supra,* at 151, n. 6; *United States* v. *Paramount Pictures, supra,* at 173; *United States* v. *Yellow Cab Co.,* 332 U.S. 218, 225-226 (1947). But the essence of illegality in tying agreements is the wielding of monopolistic leverage; a seller exploits his dominant position in one market to expand his empire into the next. Solely for testing the strength of that lever, the whole and not part of a relevant market must be assigned controlling weight. Cf. *United States* v. *Columbia Steel Co., supra,* at 524.

"We do not think that the Times-Picayune occupied a 'dominant' position in the newspaper advertising market in New Orleans. Unlike other 'tying' cases where patents or copyrights supplied the requisite market control, any equivalent market 'dominance' in this case must rest on comparative marketing data."

In *United States* v. *du Pont & Co.,* 351 U.S. 377, where the du Pont Company was charged with monopolizing interstate commerce in cellophane in violation of Section 2 of the Sherman Act, the Court observed that "if cellophane is the 'market' that du Pont is found to dominate, it may be assumed it does have monopoly power over that 'market'" (p. 391). But it held that cellophane's interchangeability with numerous other materials sufficed to make it a part of the market for flexible packaging materials, and that on the record in the case it could not be said that du Pont had excluded competitors from the flexible packaging material market. In reaching this conclusion the Court said that "monopoly power is the power to control prices or exclude competition" (p. 391); that "illegal power must be appraised in terms of the competitive market for the product" (p. 393), and that "where there are market alternatives that buyers

may readily use for their purposes, illegal monopoly does not exist merely because the product said to be monopolized differs from others" (p. 394). The Court's conclusion with respect to the relevant market was thus stated (p. 404):

> "The 'market' which one must study to determine when a producer has monopoly power will vary with the part of commerce under consideration. The tests are constant. That market is composed of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered."

Since monopoly power must necessarily be the same, whether legally or illegally acquired, the inquiry as to the existence of monopoly power and the delimitation of the relevant market must be the same where the legality of a tying arrangement under Section 1 of the Sherman Act is in issue as where unlawful monopolization in violation of Section 2 is the charge.

Irrelevance of the total amount of appellants' lands

Since the question here is whether appellants' position with respect to their lands will justify an inference that commerce in transportation of products to and from those lands has been unreasonably restrained, the "market" claimed to be dominated must be related to the transportation market from which it is claimed Northern Pacific's competitors have been excluded. Obviously, there may be as many different transportation "markets" as there are different shipping areas in which appellants' lands are located and differing types of commodities shipped by appellants' purchasers and lessees. Shippers using one type of land obviously have no interest in and are not affected by the control exercised

over a different type of land in the same or a different area, or by control of similar lands in another area; and competition for the transportation of commodities from or to a specified shipping point could not in the nature of things be affected by a restraint of competition for the transportation of commodities from or to another shipping point. Thus, control by appellants of the supply of grazing lands in the vicinity of Miles City, Montana, for example, could not by any stretch of the imagination suppress competition for the transportation of lumber or forest products from a point in the State of Washington. Obviously, there is not just one market for appellants' lands any more than there is just one market for Northern Pacific's transportation services.

In consequence, the mere quantity of appellants' lands, in the aggregate, furnishes no justification for the assumption that they possess a monopolistic leverage over any users of interstate transportation. These lands are the remnants of a land grant consisting of alternate odd-numbered sections of land lying in belts fifty to sixty miles wide on either side of the line of railroad, and the particular locations of the remaining lands, or of the lands subject to traffic clauses, is not shown by the record. Nowhere could they constitute a solid block of lands larger than a section, and they are necessarily interspersed with lands in other ownerships. They vary in type and in the uses to which they are adapted or for which they may be valuable, and there is nothing to show that in any area or in any land market appellants' ownership constitutes a majority of available lands of a particular type. In consequence, the strength of the leverage which they may have over users of transportation services at any point or points on Northern Pacific's lines of rail-

road cannot be determined merely by the total number of acres of land they own.

The argument advanced by the Government in the Court below that land is unique in character, that a person acquiring a tract of land to carry on his business selects a particular piece of land and can find no other to suit his purpose or satisy his needs, and that therefore the ownership of a tract of land gives the owner control of the market for his land approaches the ridiculous. In any event, if such a situation exists or has existed in the case of any of appellants' lands, the fact must be established by evidence and cannot be assumed.

Such evidence as there is in the record tends to negative rather than support the conclusion that appellants have a monopolistic or dominant position with respect to lands. As hereinbefore shown (ante, p. 8), neither in Montana, Idaho, nor Washington does their ownership of standing timber amount to as much as 6% of the total, and, in the three states combined, their aggregate ownership is only 4.84% of the total. And the fact that, in 1949, they still owned over a million acres of grazing lands, although for more than fifty years they had been diligently attempting to sell those lands free of any preferential routing provisions, indicates very clearly that the market for such land is and always has been a buyer's market (See deposition of John Hughes, pp. 24-26).

Whether appellants have any market dominance resulting from ownership of lands sufficient to give them coercive power or leverage over users of transportation services is, we submit, a question of fact which cannot be resolved on the record now before the Court.

B. Appellants' traffic clauses neither restrict competition in any transportation market nor operate to the detriment of the public, and they are prima facie reasonable.

The traffic clauses before the Court are, as a rule, expressly conditioned upon Northern Pacific's rates and service being equal to those of any competing line. In grazing leases, timber sale contracts, and contracts relating to the sale of timber lands, the qualifying phrase is simply "rates being equal", or the equivalent. The evidence before the Court, however, is that whether or not the equality of service was expressly mentioned, all of the traffic clauses had been administered by appellants and understood by purchasers and lessees as not requiring use of Northern Pacific's service unless "it was reasonable to expect his business as against his turning it over to a competitive railroad" (deposition of John Hughes, p. 66). Holders of grazing leases testified, in substance, that under the traffic clause contained in their leases they always selected their transportation agency on the basis of their convenience and cost. (See, for example, deposition of Virgil O. McWhorter, p. 56). The phrase, "rates being equal" would certainly seem to imply equality of service, for, unless the services are the same, rates cannot be compared.

In consequence of the provisos to which they are subject, appellants' traffic clauses only control the shipper's choice of transportation agencies where that choice is determined by considerations other than of rates and service, i.e., where it is a matter of indifference to the shipper which agency he will select, and patronage is normally the result of friendship, reciprocity, or like consideration. It is natural,

normal and reasonable for parties dealing with each other to expect reciprocal favors.*

As said by this Court in *Associated Press* v. *United States*, 326 U.S. 1, at page 26, whether a restraint is unreasonable "depends, in essence, on the significance of the restraint in relation to a particular industry." In the railroad industry, railroad rates must be published in filed tariffs on statutory notice, and open to all shippers of the same commodity between the same points, and they must be reasonably related to rates from other points. A rate reduction for the benefit of one shipper necessarily redounds to the benefit of other shippers. In consequence, competition between rival transportation agencies at any shipping point can be little affected by one shipper's agreement to give a particular transportation company a priority on his business when rates and service are equal, for competition for the traffic of other shippers of the same commodity between the same points remains and

*For example, George Williamson of Sand Springs, Montana, testified as follows in his deposition (P. 11):

"Q What in your opinion does that traffic clause mea..?

A. Well, I don't know that it's compulsory.

Q. I don't think that is the answer I want. I want to know what in your opinion is the purpose of that traffic clause and why was it put into your lease?

A. Well, that is just a clause in that that if it's convenient to ship it over their road give them the traffic. I don't know, I would anyway.

Q. Why?

A. They were good enough to lease a man this land and help in anyway they can.

Q. One of the facts is that your sheep grazed on their land without a lease in the early years?

A. That's right.

Q. And you would feel that because of that?

A. Duty bound to ship by them just as a friendly gesture."

insures the benefit of competitive rates and competitive service to all shippers.

Appellants' traffic clauses are thus essentially different from the "lixator" provision which this Court held ineffectual to "avoid the stifling effect" on competition of the tying agreements considered in *International Salt Co.* v. *United States*, 332 U.S. 392, 397. The "lixator" contracts provided that if any competitor offered salt of equal grade at a lower price the lessee should be free to buy on the open market, unless the International Salt Company would furnish the salt at an equal price. The Salt Company thus always had the privilege of determining whether or not it would meet the price of competitors before the lessee was free to buy on the open market, while here railroad rates do not have that flexibility. It cannot be supposed that the traffic clauses here discourage competitors from making rate reductions or offering better service, or both, for regulatory restrictions in the railroad industry limit the freedom of a railroad company to make special adjustments in its rates.

The difficulties encountered by the railroads in meeting the rates and service of truck lines, water lines and pipe lines are matters of common knowledge. The April 1955 Report of the Presidential Advisory Committee on Transport Policy and Organization contains the following on page 1:

> "*Within the short span of one generation this country has witnessed a transportation revolution.*—All elements of the economy have been profoundly affected—investors in transportation property, geographic regions, distribution, individual shippers, the taxpayer, the ultimate consumers of goods and services. As late as 1920, the railroads held a virtual monopoly of intercity transportation with the exception of areas served by water. In striking contrast, there is available today a wide selection of transport methods for the movement of

goods and people from one place to another with economy, expedition, and safety. The individual, whether traveling for recreation or business purposes, has a choice as between the private automobile, intercity bus transportation, air transportation, and railroad travel. The shipper distributing finished products to a nationwide market, is free to elect the use of his own trucks, common or contract carriers by highways, a continental and physically integrated system of common carrier transportation by railroad, pipelines, coastal and intercoastal services, inland water transportation, or the rapidly developing air cargo services."

The 70th Annual Report of the Interstate Commerce Commission, dated November 1, 1956, contains the following comments on pages 1 and 2:

"Public transportation generally is a sound, progressive, and profitable business, but a process of erosion has been taking a gradual and persistent toll for some years. Data which follow show, among other things, that the great expansion of the country's business activity has enabled the railroads to command a larger volume of traffic, but also that their percentage of aggregate intercity ton-miles has declined. They and motor common carriers face increasing competition of exempt and private carriers. The trends involved give rise to concern."

* * * * *

"The transportation charges the public pays could be lower if there were not such diversions of traffic. On the other hand, these carriers are cutting their rates where there seem to be opportunities to meet such outside competition and, in a period in which competition is at its zenith, are cutting rates on a selective basis to divert traffic from one another."

Traffic clauses such as are here in issue have been many times before the courts and have been uniformly upheld

as reasonable and neither in restraint of trade nor otherwise unlawful.

In *Bald Eagle Valley R. Co.* v. *Nittany Valley R. Co.*, 171 Pa. St. 284, 33 Atl. 239, a covenant obligating a shipper to give a railroad company "all the traffic coming to or going from the property, mines and furnaces owned and controlled, and to be built and operated by them", in consideration of certain financial assistance, was held not in restraint of trade, the Court stating that "its express purpose and necessary effect are to increase both trade and population", and that "not a single traveler or shipper outside the contracting parties is affected in his selection of a route."

In *Interstate Commerce Commission* v. *C. G. W. R. Co.*, 209 U.S. 108, this Court held valid, as against a claim of violation of the Antitrust Act, a contract between the Railroad Company and shippers of packinghouse products, which provided that in consideration of the maintenance of certain rates the packers would deliver to the Railroad a certain percentage of their traffic in packinghouse products. The Court said that common carriers are free "to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits", and that they "may contract with shippers for a single transportation or for successive transportations."

In *United States* v. *Reading Co.*, 253 U.S. 26, this Court considered traffic clauses in two different settings under the Sherman Act. With respect to a covenant in a lease to a railroad company of a line of railroad owned by a coal company requiring the coal company to ship to market over the leased line three-fourths of all the coal which it should produce in the future, the Court held the claim of violation of the antitrust law "too insubstantial to be entertained." With respect to covenants contained in many leases

for the operation of coal producing lands which provided that the lessee should ship all coal mined by rail routes named or to be named, the Court, while not holding them *per se* unlawful, said (p. 55), "Since this covenant was resorted to as a part of the scheme to control the mining and transportation of coal, which is condemned as unlawful in this opinion, the decree of the District Court enjoining the lessors and the other defendants herein from attempting to enforce such covenants will be affirmed."

In *Stephenson* v. *St. Louis Southwestern Ry. Co. of Texas*, 181 S.W. 568, the Court of Civil Appeals of Texas held that a provision in a lease of railroad right of way to a lumber company, that the lumber company would ship over the line of the railway "all freight consigned to the party of the second part at said station which is transported to said point by rail, or may or can be transported to said points over the rails of the railway company" and "all freight it may have at any time to be transported or shipped from said place", subject to a proviso "that the rates over said route are equal to those of its competitors", did not violate the Texas Antitrust Act which prohibited contracts creating restrictions in trade and contracts preventing or lessening competition in the transportation of merchandise, produce or commodities. The Court said:

> "When freight rates are made either by the carriers or the rate-making authorities, the shipper still has the choice of route and carrier, and may, if he desires, select the longest route or the poorest equipped carrier, and base the selection so made upon friendly relations with the carrier or upon any other ground that may appeal to him. By the terms of the contract under discussion no more can be said, it occurs to us, than that the Frost Lumber Company, in consideration of the railway company agreeing to permit the use of its right

> of way for a nominal sum, in turn agreed that, rates being equal, it would give the railway company preference. Agreeing to prefer a particular line of railway in matters of freight does not of itself 'create or carry out restrictions in the free pursuit of a business authorized or permitted by the laws of this state,' when unaccompanied by any act which actually does interfere with the pursuit of such business * * * There being no agreement that the Frost Lumber Company shall ship exclusively over the line of the appellee railway company, but, on the contrary, an express reservation that it may decline to do so, we are unable to see how the agreement can have the effect urged. Conceivably and probably appellee railway company may be unable to meet the rates of competing lines on both outbound and inbound freights."

In *Southwestern Lumber Co.* v. *Kerr*, 11 F. Supp. 253, 266, the Court held that traffic clauses in contracts relating to the sale of timber lands which required shipment of all lumber and other products of mills of the lumber company, regardless of the source of the timber, over a specified line of railroad, did not violate the Texas Antitrust law as that law had been uniformly construed by Texas courts.

See also, *Texas and Pacific Railway Company* v. *Texas Short Line Railway Company*, 80 S.W. 567, and *Saner-Whiteman Lbr. Co.* v. *T. & N. O. R. Co.*, 282 S.W. 267.

Other cases in which traffic clauses have been held valid against objections other than claimed violation of the antitrust laws, are:

United States v. *Northern Pacific Railway Co.*, 18 F. 2d 299, where appellants' leases of portions of its right of way at Spokane, Washington, were held not violative of the Elkins Act, and were conceded by the Government not to be unlawful "merely because of the routing clause" (p. 305).

Cascade Timber Co. v. *Northern Pacific Railway Company*, 28 Wn. 2d 684, where the Court upheld the validity of the traffic clause contained in a contract for sale of certain timber land, and refused to compel the Railway Company to execute and deliver a deed conveying the timber land free and clear of the traffic clause.

Northern Pacific Railway Co. v. *St. Paul and Tacoma Lumber Co.*, 4 F. 2d 359, where the Ninth Circuit Court of Appeals held valid and enforceable a contract by which the Lumber Company agreed to ship over defendant's line at least sixty per cent of the lumber manufactured from timber lands acquired by it from the defendant, as against a contention that the routing clause was in conflict with public policy and void because of its tendency to induce the Railway Company to violate sections 2 and 3 of the Interstate Commerce Act.

In view of the antiquity of the traffic clauses, the many times they have been considered by the Department of Justice and others, and their uniform approval by the courts, their *prima facie* reasonableness, especially where, as here, they leave the purchaser or lessee free to use other transportation agencies where it is to his advantage to do so, can not be gainsaid.

CONCLUSION

Summary judgment was clearly unauthorized in this case. The commerce in transportation alleged to be restrained was not geographically or otherwise defined except as consisting of transportation of "commodities and products shipped from * * * and to persons and concerns occupying both Northern Pacific Railroad owned lands and Northern Pacific controlled lands", which lands were not

themselves identified. The commerce obviously consists of many different and unrelated lines of commerce in transportation. Neither exclusion of competitors from any of these transportation markets nor stifling effects of the traffic clauses on competition therein could fairly be inferred from the face of the clauses or from the manner in which they had been understood and administered, in view of the freedom they allow purchasers and lessees to use the services of competing forms of transportation when to their advantage to do so. And neither appellants' ownership of lands nor the aggregate amount of lands owned could *ipso facto* confer control of any market for land or vest in appellants such coercive power over users of land in any market as to warrant the inference that competition in transportation at any shipping point had been or probably would be restricted by the use of these clauses.

Material issues of fact, either as to appellants' alleged use of monopolistic powers to gain an unfair advantage over competitors or as to the alleged suppression of competition or other harmful economic effects of the clauses, accordingly remained for trial. We respectfully submit that the judgment should be reversed and the case remanded to the District Court for trial.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

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Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.

REPLY BRIEF FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

The brief for the United States in this case argues that appellants' traffic clauses foreclose competitors from "the substantial market represented by shippers who have leased or purchased appellants' lands" because they "deny competing sellers of transportation equal access to the market on the same terms as appellant" (Br. p. 21). The claim is that in *International Salt Co. v. United States*, 332 U. S. 392,

this Court held a like provision exclusionary. In order to satisfy the requirement that "market dominance" over the "tying" product must also appear, the Government argues that land is inherently unique, and, because no two parcels are exactly alike, each parcel constitutes the whole of a relevant market, so that the owner is a monopolist with respect to the market for his land. It seeks to bolster this argument by contending that in *International Salt* it was the uniqueness of the patented article and not the patent monopoly which made it unnecessary to consider the availability of substitutes.

Our answer to these contentions follows.

1. Appellants' Traffic Clauses Do Not Exclude Competitors From the Market.

As pointed out in our opening brief, appellants' traffic clauses do not require lessees or purchasers to use Northern Pacific services at all events, but only when the destination can be reached via its lines and its rates and service are equal to those of competitors. They differ from the "Lixator" contracts considered in *International Salt*, in that they do not require the lessee to give Northern Pacific an opportunity to meet the rate of a competitor before being free to use the services of the competitor, as did the Lixator contracts, but require Northern Pacific to keep its rates and service competitive at all times if it is to get the business of its lessees and purchasers. Since Northern Pacific's rates must be published in its tariffs, and open to all shippers of the same commodity between the same points and subject to change only on 30 days' notice, appellants' traffic clauses cannot be presumed to have any stifling effect on competition. Rates of competing carriers are not always the

same between the same points. Transit privileges, stops to complete loading or to partially unload, or other special privileges which affect the measure of the rate, may be available via one line and not via another. Common carrier motor truck lines publish different rates than railroads, and contract truckers and exempt truckers notoriously compete for business on special or secret rates. And, as is well known, the controlling competition affecting the measure of rail rates is often the competition of rates to common markets from other producing sections, rather than competition for the business of the same shippers.

The Sherman Act is concerned with the advantages which accrue to the public from free competition in the market, and we do not uderstand that it is concerned with the share of the business any competitor may obtain. In consequence, it is difficult to understand why it should be supposed that competition will necessarily be injured to the detriment of the public, unless competing sellers of transportation are guaranteed the opportunity to secure a share of the business of occupants of appellants' lands without offering better rates or better service than Northern Pacific offers.

As we read the opinion in the *International Salt case*, the "Lixator" contracts were condemned, not on the ground that they foreclosed competitors from any substantial market, but on the ground that they tended to monopoly and hence violated Section 3 of the Clayton Act. The "Saltomat" contracts required exclusive use of International's salt at all events and plainly did foreclose competitors from the markets for salt preempted by those machines. What the Court said respecting the unreasonableness *per se* of foreclosing competitors from any substantial market was thus clearly applicable to the Saltomat contracts. But its holding with

respect to the "Lixator" contracts was only that the proviso did not avoid "the stifling effect of the agreement on competition" or relieve it of being a restraint of trade, "albeit a less harsh one than would result in the absence of such a provision." If the Court had considered that the "Lixator" contracts also foreclosed competitors from a substantial market, there was no need for its statements (p. 396) concerning "the tendency of the arrangement to accomplishment of monopoly." But the patent monopoly held by the International Salt Company on the manufacture and sale or lease of its salt machines made the tendency of the "Lixator" contracts to accomplishment of monopoly obvious, for the priority it obtained on the sale of salt for use in such machines would necessarily expand as patronage of its salt machines increased; and there was no limit to the number of such machines it could exclusively produce.

The situation in respect of appellants' lands is wholly different. Their ownership has no potential for expansion; on the contrary it is dwindling. It gives them no power over or exclusive right to other lands. Any priority Northern Pacific may obtain upon the business of lessees and purchasers of its lands must necessarily be limited to what appellants' dwindling ownership of lands produces and hence cannot tend to monopoly. Moreover, while International's salt machines preempted existing markets for salt, appellants' sales contracts and leases of its lands, instead of closing existing markets, have brought into production new land not theretofore worked, created new markets for transportation services and increased rather than restrained interstate commerce and trade. Northern Pacific's priority is only with respect to new business which it has developed—not with respect to business previously open to competitors—and it exists only when Northern Pacific

offers as favorable terms as any competitor. To say that this is the exclusion of competitors from a substantial market is palpably fallacious.

2. The Uniqueness of Land Does Not Warrant the Conclusion That Appellants Necessarily Have Market Dominance or Monopolistic Leverage By Virtue of Their Land Holdings.

We have been unable to find any cases dealing with land as a subject of monopolization. Some light is thrown on the subject, however, by the definition of "monopoly" given in the Restatement of the Law of Contracts, Sec. 515(d), as follows:

> "In the Restatement of this subject 'monopoly' means more than exclusive ownership of specific property or business. Every owner has in the broad sense of the word a monopoly of what he owns. In the Restatement of this Subject 'monopoly' is such ownership or control as dominates the means of production or the market in a business or occupation."

Basically, land is important from an economic standpoint simply as the means of production of commodities. In consequence, land ownership becomes monopolistic only when it dominates the means of production of a particular commodity in a particular market or locality. Thus, in *United States* v. *Reading Company*, 253 U. S. 26, ownership of the major portion of the anthracite coal bearing lands in the Schuylkill Region of Pennsylvania together with control of the railroads serving that field was found to be the means of obtaining a dominating control over the coal of the Schuylkill Field and over its transportation to market.

On the issue of market dominance or monopolistic leverage,

therefore, the "uniqueness" of land in respect of "its locality, character, vicinage, soil, easements or accommodations" is quite irrelevant, for it is the products rather than the land itself which are important. The products of one piece of land obviously do not differ from the like products of other land in the same locality. Thus the coal contained in one tract of land in a coal field does not differ from the coal contained in other tracts of land in the same field; the grass produced on one tract of grazing land does not differ from that on other tracts in the same area and the timber on a particular tract of timber land does not differ from the timber on another tract in the same area. Hence, in a tying arrangement with respect to land, the tying commodity is really not the land itself but the product for which the land is desired.

We cannot agree with the Government's contention that in *International Salt Co. v. United States*, 332 U. S. 392, it was the uniqueness of the patented article itself and not the patent monopoly that gave the Salt Company "monopolistic leverage" over users of the tied product. We think it clear that it was the right given by the patent to exclusively produce and lease the patented machines which furnished the monopolistic leverage, for this enabled the Salt Company to compel those desiring to use the patented machines to deal only with it and thereby compel their use of its salt. No matter how unique the machines might have been, if others had been free to manufacture and sell them the monopolistic leverage would have been wholly lacking. So, if in each locality where appellants' lands are located there are many more lands producing the same commodities, appellants' ownership cannot give them any monopolistic leverage or coercive power over producers or shippers of those commodities.

The references in the Government's brief to the testimony of lessees of appellants' grazing lands that appellants' lands, being interspersed with their other holdings, filled out their respective ranges and were for that reason important to them, does not demonstrate market dominance or monopolistic leverage, even in the case of grazing lands, to which this evidence alone relates. Appellants' checkerboard ownership is only one fact among many necessary to be considered. Among such other facts are: Whether appellants' grazing lands were leased first, or whether they were leased simultaneously with or after the lands with which they were interspersed were acquired; whether appellants were faced with the alternative of leasing the lands to the ranchers or letting them stand idle (because no one else would take them) or whether the ranchers were under the necessity of leasing them; and whether any of these lessees were financially able to purchase the leased lands and thus obtain them free of any traffic clause, had they so desired. No conclusion that appellants had any coercive power over their grazing lessees can properly be reached until these questions are answered.

Because a tying arrangement does not *necessarily* lessen competition substantially or exclude competitors from a substantial market or tend to monopoly in another line of commerce, *per se* illegality of such an arrangement under Section 1 of the Sherman Act depends upon a showing of market dominance over the "tying" product sufficient to coerce the patronage of those engaged in the business or occupation which provides the market for the tied product or service. Otherwise only voluntary contractual relations between buyer and seller, without *exclusion* of competitors from the market, can be presumed and neither substantial lessening of competition to the detriment of the public nor tendency to monopoly can be inferred. When it is remem-

bered that it is not land but the products of land that provide the market for transportation services, it becomes evident that ownership of insufficient lands to enable the owner to dominate the market for the products of his land must also be insufficient to coerce the patronage of those who are engaged in producing such commodities and who provide the market for their transportation. The products of one producer's lands are only a part of the market for transportation of such products and an exclusive right to transport the products of part of the lands in a producing area clearly does not *exclude* competitors from that transportation market nor does it necessarily affect competition to the detriment of the public or tend to monopoly.

There is no evidence in this case that appellants have by virtue of their land holdings any monopolistic leverage from which exclusion of competitors from any substantial market or substantial lessening of competition or tendency to monopoly could be inferred and there is nothing whatever to show that any harmful economic consequences have resulted from their use of traffic clauses. Summary judgment should not have been granted.

Respectfully submitted,

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No. 59

In the Supreme Court of the United States

OCTOBER TERM, 1957

NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 184–192) is reported at 142 F. Supp. 679. The court's oral decision denying appellants' motion for reconsideration (R. 210–215) is not reported.

JURISDICTION

The judgment of the district court was entered on August 31, 1956 (R. 194–198), and the notice of appeal was filed in that court on October 23, 1956 (R. 215–218). Probable jurisdiction was noted on January 21, 1957 (R. 219). The jurisdiction of this Court

is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. 29.

QUESTION PRESENTED

Whether the court below correctly entered summary judgment enjoining appellants from enforcing provisions in contracts for the sale or lease of lands requiring the purchaser or lessee to ship products of the lands over appellants' lines, provided the rates are equal to the rates of competing lines, on the ground that such provisions are unreasonable restraints of trade in violation of Section 1 of the Sherman Act.

STATUTE INVOLVED

Section 1 of the Act of July 2, 1890, 26 Stat. 209, 15 U. S. C. 1, known as the Sherman Act, provides in part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal: * * *.

STATEMENT

On May 26, 1949, the United States filed a civil suit, under Section 4 of the Sherman Act, alleging that provisions in deeds and leases of property sold or leased by appellant railroad, and its subsidiary, under which the purchasers or lessees agreed to ship the products produced on such lands by the railroad, as long as the latter's rates did not exceed those of competing lines, constituted unreasonable restraints of trade, in viola-

tion of Section 1 of that Act (R. 1–12).[1] After various pre-trial proceedings, the United States moved for summary judgment. The district court (Judge Boldt) granted the motion in part, and entered a partial final judgment enjoining appellants from violating Section 1 of the Act (R. 194–198).

THE FACTS

The essential facts, as found by the district court and not here disputed,[2] are as follows:

Appellant, Northern Pacific Railway Company ("Northern Pacific"), is a Wisconsin corporation engaged in transporting passengers and freight in interstate commerce (R. 199).[3] It is the successor to Northern Pacific Railroad Company, a railroad chartered by special Act of Congress on July 2, 1864 (R. 199). By that act and Joint Resolution of May 31, 1870, Northern Pacific's predecessor acquired 39,494,391 acres of public land, almost all of which were located in what are now the states where Northern Pacific's

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[1] The complaint also charged that appellants, through the use of such provisions in their deeds and leases, have conspired and combined to monopolize interstate commerce, in violation of Section 2 of the Sherman Act.

[2] The facts are based upon the allegations in the complaint (R. 1–12), insofar as they are admitted in the answer (R. 12–22); the admissions made in appellants' response and supplemental response to appellee's request for admissions under Rule 36 of the Federal Rules of Civil Procedure (R. 78–98, 103–144, 23–77); and statements in the stipulations of the parties (R. 99–102).

[3] Appellant Northwestern Improvement Company ("Northwestern"), a Delaware corporation, is a wholly-owned subsidiary of Northern Pacific. It sells, leases and manages the railroad's lands (R. 199).

lines operate (Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon) (R. 200–201). The grant consisted of (1) a 400-foot right of way, and (2) the ten (twenty in territories) nearest alternate sections of non-mineral land on each side of each mile of the railroad line (R. 200).[4]

On May 26, 1949, when this action was brought, appellants had sold much of the granted land. They retained about 2,700,000 acres of land (not including right of way), a substantial part of which is leased to various persons. The lands sold or leased are of many types. Some contain timber, iron ore, coal, oil and gas or other natural resources; others have been used for grazing, agriculture or location of industrial sites (R. 201).

In all land leases and in most timber land sales contracts, as well as in contracts for the sale of timber, "traffic clauses" are customarily inserted by appellants. These clauses require the lessee or grantee to ship over the Northern Pacific's lines all commodities produced on or manufactured from timber on the land, provided that Northern Pacific's rates (and in some leases, its service) equal those of any competing line (R. 201–202). In grazing and most mineral

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[4] The lands thus granted were in two belts, each twenty miles wide in states, and forty in territories, parallel to the right of way. *United States* v. *Northern Pacific Ry. Co.*, 311 U. S. 317, 328. Where such land was unavailable next to the railroad line, alternate sections were granted in two belts lying, respectively, not more than ten and twenty miles beyond the limits of the original grant. In lieu of mineral lands, the carrier could select agricultural lands within 50 miles of the railroad line (R. 200).

leases and in timber land and sales contracts, shipment by Northern Pacific must be made if its rates are equal to those of any competing line (R. 203, 205–207). Iron ore, coal, and oil and gas leases condition such shipment on both rates and services being equal (R. 203–205).[5]

Over the years, appellants have entered into a substantial number of agreements containing these traffic clauses (R. 203–207). At the time of suit in 1949, the following agreements containing traffic clauses were in effect: 1,000 grazing leases covering more than 1,000,000 acres of land; at least 19 oil and gas leases covering 135,000 acres of land; at least 12 coal land leases; at least 16 iron ore leases covering 5,261 acres of land; at least 17 mineral land leases covering 6,810 acres of land; at least 31 timber sales contracts covering 100,585 acres and 1,491,895,995 board feet of timber; at least 72 timber land sales contracts covering 1,244,137 acres containing 6,572,762,000 board feet of timber (R. 203–207).[6]

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[5] The coal and oil and gas leases require routing over Northern Pacific only of all traffic "destined for rail shipment" (R. 203–204). In addition, these leases require all incoming freight to be via Northern Pacific; and the oil and gas leases require delivery of all oil to a pipe line reaching the rails of Northern Pacific where such pipe line is available and a price can be obtained for oil so delivered which is at least equal to the price obtainable for oil delivered to any other pipe line. (*Ibid.*) The timber sales and timber land contracts require the purchaser to make monthly reports to Northern Pacific of shipments under the traffic clause, and to permit the latter to examine the records for the purpose of verifying the reports (R. 206–207).

[6] This amount of timber does not include the particular contract, referred to by appellants (Br. 11–12), the traffic clause in which apparently has expired.

A large portion of the shipments of commodities covered by the traffic clauses has been and is shipped in interstate commerce (R. 202). Alternative means of transportation exist for a substantial part of such commodities, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines (R. 202–203).

THE OPINION BELOW

In granting judgment, the district court held that "[o]n the established facts all of the traffic clauses in question, excepting those in the industrial (including grain elevator and grain warehouse) leases, are shown to be violative of Section 1 of the Sherman Act under the principles enumerated in the tying cases [decided by the Supreme Court]" (R. 192).[7] Those principles, the trial court stated (R. 187–188), establish a *per se* violation of the Sherman Act where (1) the seller or lessor enjoys market control of the tying commodity, and (2) the amount of interstate commerce in the tied product is not insignificant or insubstantial. The lower court, on the basis of *International Salt Co.* v. *United States*, 332 U. S. 392,

[7] The court noted that the industrial leases grant a use of right-of-way lands and that "[s]uch lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity" (R. 191). It therefore concluded that a trial was required to determine the factual question whether "the industrial leases involve distinct and separate tied and tying commodities, as held required * * * in *Times-Picayune* v. *United States* * * *" (R. 191–192).

found that appellants had market dominance over the tying commodity (their lands) (R. 189–190), and that the "actual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial * * *" (R. 191). It accordingly adjudged the traffic clauses unlawful (with the exception of those in the industrial leases), and enjoined appellants from enforcing them or entering into agreements containing them (R. 195–196).

SUMMARY OF ARGUMENT

A. This case presents a tying arrangement whereby rival transportation agencies, even though competing on even terms with appellant Northern Pacific, are foreclosed from the substantial market represented by shippers who have leased or purchased appellants' lands. This Court held in *Times-Picayune* v. *United* States, 345 U. S. 594, that because it is unlawful, *per se,* to foreclose competitors from any substantial market, arrangements tying the sale of one product to the sale of another product or service are banned by Section 1 of the Sherman Act whenever two conditions are established: (1) that the seller has market dominance over the "tying" product; and (2) that a substantial volume of commerce in the "tied" product is restrained. Since the volume of commerce in the "tied" transportation service was concededly substantial, the crucial question here is whether the first criterion was met.

International Salt Co. v. *United States,* 332 U. S. 392, which involved a tying arrangement by means

of which the lessor of a patented salt machine required the lessee to use only its salt in the machines, supports the view that the Government need not establish the absence of competition with respect to the tying product. In *International Salt* this Court, in finding a violation of Section 1 of the Sherman Act, rejected the defendant's argument that summary judgment was improper because it should have been permitted to establish that other competing machines were available to the lessees. Since this Court has explicitly stated that it was irrelevant whether the defendant was dominant in the market of machines for the utilization of salt, the basis of *International Salt* is clearly independent of absence of competition between the patented "tying" article and others. Lessees, who for whatever reason preferred International Salt's unique machines, were forced to deal with the latter, both as to the machine and consequently the "tied" product.

That is also true here. The vendee or lessee of a piece of land has selected that parcel because, for any of a number of objective and perhaps subjective reasons, he believes it to be the one most suitable for him. The uniqueness of the land has been recognized for centuries by the case law governing land transactions, and finds further support in the depositions of a number of lessees who operate under the traffic clause. These lessees testified to the great importance to them of their Northern Pacific land holdings, particularly in filling out or "blocking" their range, or in providing needed water. Thus, appellants' extensive land holdings gave to them the "monopolistic lever-

age" whereby the vendee or lessee, who sought to acquire the particular land parcels owned by appellant, could be coerced into also agreeing to ship the produce of that land over the Northern Pacific's lines. Appellant's contention that it was necessary to determine at the trial their relative position in the various land markets is precisely the argument rejected by this Court in the *International Salt* case.

B. Appellants' several arguments attempting to establish the reasonableness of their traffic clauses are without merit. The proviso in the traffic clauses permitting the lessee to use a competitor's transportation service if its rates are lower than those of Northern Pacific, does not establish effective competition. Nor does the fact that the railroad industry is of a common carrier, regulated nature justify these "tying" restraints. Other transportation agencies competing on even terms as to rates and service are precluded from the substantial market involved, and the existence of the traffic clauses is a powerful deterrent to any competitive effort to reach that market.

C. Not only are appellants' traffic clauses illegal under the principles of the tying cases, but the restraints imposed are unreasonable on their face under settled antitrust concepts. Appellants' obvious aim is to preclude competitors from gaining access to the transportation market represented by their vendees or lessees. No legitimate business aims motivate appellants, nor do the contracts disclose any benefit to vendee or lessee warranting the routing restraint. The traffic clauses thus embody the very vices which

led this Court in *Fashion Originators' Guild* v. *Federal Trade Commission,* 312 U. S. 457, and *Associated Press* v. *United States,* 326 U. S. 1, to condemn the restraints there involved as unreasonable on their face.

ARGUMENT

APPELLANTS' TRAFFIC ROUTING CLAUSES CONSTITUTE UNREASONABLE RESTRAINTS OF TRADE IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT

A. THE CONTRACTS FOR THE SALE OR LEASE OF THE LAND CONTAIN ILLEGAL TYING PROVISIONS

1. In *Times-Picayune* v. *United States,* 345 U. S. 594, 608–609, this Court stated that a tying arrangement is illegal under Section 1 of the Sherman Act (1) "[w]hen the seller enjoys a monopolistic position in the market for the 'tying' product," and (2) "if a substantial volume of commerce in the 'tied' product is restrained." Plainly, the second condition of illegality has been met in this case. The district court found (R. 191) that "[a]ctual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial"—a finding which clearly is correct[8] and which appellants do not seriously challenge.[9]

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[8] See Statement, *supra,* p. 5, showing the substantial volume of land covered by such clauses.

[9] Appellants' suggestion (Br. p. 12) that because the record does not show how much of the standing timber covered by timber land sales remained uncut in 1949, "it cannot be assumed that in 1949 any very large amount of timber land theretofore sold by appellants was affected by these traffic clauses," ignores that fact that appellants sold a large volume of timber land in the mid-1940's (R. 89–90, 93–96).

The issue, therefore, is whether Northern Pacific "enjoys a monopolistic position in the market for the 'tying' product." The district court answered that question affirmatively, on the ground that the "market for the 'tying' product" was the market for Northern Pacific's land and not, as appellants contended, the market for all land in the same area which could have been used for the same purpose. The court concluded that since Northern Pacific admittedly had a monopolistic position in its own land, there was "no genuine issue as to any material fact" requiring a trial and that the Government was entitled to judgment.

Under the rule of *International Salt Co.* v. *United States,* 332 U. S. 392, the district court correctly granted summary judgment in favor of the Government. In that case the salt company leased about 900 patented salt dispensing machines under contracts requiring the lessees to use with the machines only salt purchased from it. Pursuant to such tying arrangements, International in 1944 sold about $500,000 worth of salt for use with the leased machines. The Government challenged these tying arrangements as illegal under both Section 1 of the Sherman Act and Section 3 of the Clayton Act. The district court granted the Government's motion for summary judgment, and this Court (unanimously on the issue of violation) affirmed.

In its appeal to this Court, International Salt pointed out that "[i]t does not follow, of course, that because a machine is patented no machine capable of doing

similar work can be obtained from any one other than the patentee"; and it argued that "[t]his is one of the questions of fact on which defendant was entitled to a trial" (App. Br., No. 46, Oct. Term, 1947, p. 25).[10] To this, the Government replied (Br. pp. 48–49):

> Even if it be assumed, as the trial court did assume (in the absence of anything in the record on the point), that there are other machines available to perform similar functions [footnote omitted], the result would be the same. Obviously the other machines would not be identical with appellant's, inasmuch as appellant's machines are patented. Presumably appellant's lessees chose appellant's machines because they thought them preferable. Once they had made that choice, the tying clause prevents competition between those who would sell salt to them and appellant. * * *

This Court found that summary judgment was authorized, on the ground that "it is unreasonable, *per se* [under Section 1 of the Sherman Act], to foreclose competitors from any substantial market" (p. 396).

In *Standard Oil Co.* v. *United States*, 337 U. S. 293, 305, the Court subsequently set forth the basis of its decision in *International Salt:*

> It was established by pleadings or admissions that defendant was the country's largest

[10] See, also, appellant's reply brief, where it asserted (p. 7) that the fact "that similar products [can] readily be obtained elsewhere * * * will appear in the case at bar, if the appellant is permitted to go to trial."

> producer of salt for industrial purposes, that it owned patents on the leased machines, that about 900 leases were outstanding, and that in 1944 defendant sold about $500,000 worth of salt for use in these machines. *It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competion.* * * * [Emphasis added.]

International Salt thus did not rest on any finding that the defendant was dominant in the market for all salt dispensing machines. On the contrary, this Court must have assumed, as had the lower court (see 6 F. R. D. 302, 307), that substitute machines for those of the defendant were available.[11] Yet it deemed this consideration irrelevant. Indeed, since the defendant might have controlled only a small portion of the business of supplying salt machines,[12] the basis of the

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[11] This Court, on several occasions, has noted that "most * * * patents * * * give control over only some means of production for which there is a substitute." *Associated Press* v. *United States*, 326 U. S. 1, 17, n. 17; *Standard Oil Co.* v. *United States*, *supra*; at p. 307. Indeed, in the *International Salt* case, the Government pointed out that the Court's opinion in a prior case had indicated the existence of a rival salt dispensing machine (Br., p. 26, note 8). See, also, *International Business Machines Corp.* v. *United States*, 298 U. S. 131, involving a similar tying situation in which a rival firm (Remington Rand) made competitive machines.

[12] Cf. *Oxford Varnish Corp.* v. *Ault & Wiborg Corp.*, 83 F. 2d 764 (C. A. 6), where, in a case which held tie-in sales illegal under Section 3 of the Clayton Act, the patented article constituted only about one-half of one percent of the total volume of the industry.

Court's decision necessarily must have been independent of the absence of competition between the patented article and others. Since no other machine could be exactly like those of International Salt, persons who for whatever reason preferred International Salt's machines were forced to deal with the latter, both as to the machine and as to the "tied" commodity. It is because of the market control of the patented or copyrighted article itself that in these situations the patented or copyrighted article is "the whole * * * of a relevant market" (*Times-Picayune*, at p. 611).[13]

The rationale of *International Salt* is equally applicable to the instant case. While one sack of sugar or bale of cotton or gasoline pump (cf. *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463, 474) may be much like another, one parcel of land is never identical with another. Land, like a patented or copyrighted article, is inherently unique. For "a specific piece of land is in its nature different from every other piece" (5 Williston on *Contracts*, Sec. 1419 (Rev. ed., 1937)), and "is unique and impossible of duplication by the use of any amount of money" (Restatement of the Law of Contracts, Vol. II, Sec. 360). The purchaser may desire a particular piece of land because of its "locality, character, vicinage, soil,

[13] In *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 157–158, this Court found block-booking of motion picture films to violate Section 1 of the Sherman Act, since "the result is to add to the monopoly of the copyright in violation of the principle of the patent cases involving tying clauses" (p. 158).

easements, or accommodations * * * [which] give it a peculiar and special value in the eyes of the purchaser, so that it cannot be replaced by other land of the same precise value, but not having the same precise local conveniences or accommodations." 2 Story *Equity Jurisprudence*, Sec. 1031 (14th ed., 1918). It is for this reason that equity always has granted specific performance of contracts to convey land; because of the uniqueness of land, damages necessarily cannot constitute an adequate remedy for breach of such contract.

Many of appellants' purchasers or lessees came to appellants, rather than to other landowners, because (for whatever reason) they deemed appellants' lands most suitable for them. Thus, depositions of a number of lessees who operate under the traffic clause (which were before the district court when it decided the motion for summary judgment, App. Br. 6) indicate the importance to them of Northern Pacific lands. The uniqueness of such lands to prospective purchasers and lessees was heightened because the alternatively odd-numbered sections of land which Northern Pacific received under its grant from the Government created a checkerboard pattern in the area, and made it important to owners and lessees of adjoining land that they obtain Northern Pacific land in order to "fill out" their own holdings.[14] For these

[14] Appellants took depositions only of its grazing and industrial lessees. The following grazing lessees testified in deposition to the importance to them of their Northern Pacific holdings: McWhorter (pp. 9, 35–36, 46, 62); Dunnett (pp. 4,

reasons, presumably, appellants were able to induce purchasers or lessees, as a condition to obtaining the particular parcels they desired, to give up their normal freedom to select among competing carriers. Appellant's traffic routing clauses thus involve "the essence of illegality in tying agreements," namely, that "a seller exploits his dominant position in one market [land] to expand his empire into the next [transportation]." *Times-Picayune* case, supra, p. 611.

Appellants argue (Br. pp. 19–24), however, that the *International Salt* rule is not applicable unless the tying product is a patented or copyrighted article, and that in non-patent or non-copyright cases it is necessary to show that the seller has a dominant position in the broader market covering all effective substitutes for the tying product—in this case, the particular kind of land covered by the traffic routing clauses. Otherwise, they urge, no "monopolistic leverage" (*Times-Picayune* at p. 611) could be wielded by them, since the buyer could simply turn elsewhere for the particular kind of land he desired.

However, this argument was necessarily rejected in *International Salt*. For if there were alternative salt dispensing machines available, the salt company similarly could not have wielded any "monopolistic

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16–17, 25); Olson (pp. 5–7, 24); Pauly (pp. 4–5, 17); Carey (pp. 3, 13); Denecke (pp. 3, 19–20, 39); Magelssen (pp. 3, 13–14, 16, 18); Woodson (pp. 4, 7–8); Mallett (pp. 5–6, 13); Williamson (pp. 3–4, 8–9); Simpson (p. 8); Haughian (pp. 3–4, 10); Davidson (pp. 3–4, 10); Lange (pp. 3, 10, 16–17); Ulmer (pp. 3–4, 8–10); Brown (p. 4, 16–18); Bradshaw (p. 3, 7–8). In the appendix, we have set out some of the more pertinent statements of these witnesses.

leverage" by virtue of its patent control. The Court in *International Salt*, however, deemed it irrelevant whether there were other substitute products. Thus, the rationale of *International Salt* must have been that the salt company had a "monopolistic leverage" regardless of the presence of competing machines. While it is true that the salt company misused its patents by employing them to foreclose competitors from a substantial market for unpatented products, that fact was immaterial to the question whether the company had "monopolistic leverage" over the tied product.[15] Whether International Salt had a "dominant position" (*Times-Picayune*, p. 611) in the market for the tying product did not depend upon how it used its position.

Many other products, although neither patented nor copyrighted, may also have sufficiently peculiar characteristics so that they can serve as a basis for wielding monopolistic leverage. A particular piece of land is just as unique as a patented product, even though such uniqueness flows from the inherent character of the property rather than its patent protection. And such land, just as the salt machine, does not lose its unique character because of the fact that, if the price is too high or the restrictive conditions too burdensome, there may be substitute products to which a prospective purchaser may turn.

[15] We point out, however, that since most of the lands here involved were obtained by appellants from the Government as an "aid" to railroad construction (R. 200), it would appear to constitute an abuse of such Government grant for appellants to use the land to foreclose competition in another product. Cf. *United States* v. *Union Pacific R. Co.*, 353 U. S. 112, 114.

That the *International Salt* rule is equally applicable to tying cases involving unpatented products is borne out by *Times-Picayune*. For there this Court approved *International Salt* as the case which "wove the strands of past cases into the law's present pattern" (345 U. S. at 608), and it applied "the rule of *International Salt*" (p. 609) in testing the legality of the tying contracts there involved. Although the Court held that the facts there did not bring the case within the rule, the significant facts are that it recognized the rule as the touchstone for determining the legality of tying agreements under the Sherman Act, and that it applied the rule to advertising space, a non-patented and non-copyrighted product. Cf. also *Kansas City Star Co.* v. *United States*, 240 F. 2d 643 (C. A. 8), certiorari denied, 354 U. S. 923. Furthermore, the Court also repeated the view, first expressed in the *Standard Oil* case (337 U. S. at 306), that "[i]n the usual case * * * only [the seller's] control of the supply of the tying device, whether conferred by patent monopoly *or otherwise obtained*, could induce a buyer to enter [a tying contract]" (p. 605, emphasis added)."[18]

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[18] As stated in Lockhart and Sacks, *The Relevance of Economic Factors in Determining Whether Exclusive Arrangements Violate Section 3 of the Clayton Act*, 65 Harvard Law Review 913, 944–945:

> * * * But in most cases it should not be necessary to determine the precise degree of market control over the controlled product in order to conclude that the tying device has an adverse effect on competition. In the absence of some exceptional situation showing that economic reasons other than market control induced the user or dealer to curtail his freedom, the very existence of the

United States v. *du Pont & Co.*, 351 U. S. 377, upon which appellants rely (Br. 30–31), is not inconsistent with this analysis. There this Court, in defining the relevant market under Section 2 of the Sherman Act, stressed that it was dealing with the question of monopolization under that section, and indicated that the relevant market may be more narrowly defined for other offenses under the Act (pp. 395–396, note 23). Cf., also, *United States* v. *du Pont & Co.*, 353 U. S. 586, 593–595. Thus, while Section 2 does not outlaw monopoly achieved solely through a valid patent, *International Salt* makes it clear that tying agreements based upon such a patent may be unlawful. Here, because of the unique character of the tying product, the relevant market for determining whether appellants have a dominant position over such product is the product itself.

2. Appellants' tying agreements are not saved from illegality because the obligation to ship via Northern Pacific arises only if its rates (and service in some instances)[17] are as favorable as those of competing

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tying arrangement would seem to indicate that the supplier has sufficient market control to force his customer to adhere to the tying arrangement, and thus to lessen competition in the tied product.

[17] The qualifying phrase in the traffic clause in grazing leases, timber sale contracts and contracts for the sale of timber lands refers only to "rates being equal." Appellants attempt to convert this into "rates *and service* being equal" on the ground that the clauses have been thus interpreted. But the language is unambiguous, and the fact that appellants have not fully enforced their rights under the clauses cannot be used to justify the legality of the provisions. *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 457–458; *International Salt Co.* v. *United States*, *supra*, at 398.

transportation services. A similar argument was made and rejected in *International Salt*. There appellant contended that the tying agreements covering its "Lixator" machine were valid "because they provided that if any competitor offered salt of equal grade at a lower price, the lessee should be free to buy in the open market, unless appellant would furnish the salt at an equal price" 332 U. S. at 396). This Court ruled (p. 397, emphasis added), however:

> * * * The "Lixator" provision does, of course, afford a measure of protection to the lessee, but it does not avoid the stifling effect of the agreement on competition. *The appellant had at all times a priority on the business at equal prices:* A competitor would have to undercut appellant's price to have any hope of capturing the market, while appellant could hold that market by merely meeting competition. We do not think this concession relieves the contract of being a restraint of trade, albeit a less harsh one than would result in the absence of such a provision. * * *

Similarly, in the instant case, the effect of appellants' tying agreements is to give them "at all times a priority on the business at equal prices."[18] Indeed,

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[18] Appellants seek to justify their tying agreement on the ground that it is "normal and reasonable for parties dealing with each other to expect reciprocal favors." (Br. 34-35.) But these traffic routing clauses are not "reciprocal favors" granted by shippers in return for other benefits, but restrictive conditions imposed by Northern Pacific in order to give it competitive advantages over other carriers. If, as appellants suggest, shippers normally would give Northern Pacific their business, there would be no need for tying arrangements obligating

the fact that the tying provision applies only if Northern Pacific's rates and service are equal to those of competitors, would make shippers more likely to enter into such contracts, since on their face they would not seem to pose the threat of serious financial injury.

The traffic routing clauses deny shippers the freedom of choice among competing sellers which the antitrust laws are designed to protect; they also deny competing sellers of transportation equal access to the market on the same terms as appellant. It is for these reasons that "tying agreements fare harshly under the laws forbidding restraints of trade" (*Times-Picayune Co.* v. *United States*, 345 U. S. 594, 606), since (p. 605):

> Tying arrangements, we may readily agree, flout the Sherman Act's policy that competition rule the marts of trade. Basic to the faith that a free economy best promotes the public weal is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the Nation's resources and thus direct the course its economic development will take. Yet "[t]ying agreements serve hardly any purpose beyond the suppression of competition." *Standard Oil Co. of California* v. *United States*, 337 U. S. 293,

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them to do so. See *Times-Picayune* case, *supra*, p. 605 ("But any intrinsic superiority of the 'tied' product would convince freely choosing buyers to select it over others, anyway"). The purpose of this suit is to "pry open to competition a market that has been closed by defendants' illegal restraints" (*International Salt* case, p. 401), and to give shippers complete freedom to select their carriers uninhibited by any contractual obligation to favor Northern Pacific.

> 305 (1949) [footnote omitted]. By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the "tied" product's merits and insulates it from the competitive stresses of the open market. But any intrinsic superiority of the "tied" product would convince freely choosing buyers to select it over others, anyway. Thus "[i]n the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one." *Id.*, at 306. Conversely, the effect on competing sellers attempting to rival the "tied" product is drastic: to the extent the enforcer of the tying arrangement enjoys market control, other existing or potential sellers are foreclosed from offering up their goods to a free competitive judgment; they are effectively excluded from the marketplace.

Appellants contend (Br. pp. 36–37) that the foregoing reasons are inapplicable to the railroad industry. They state that since uniform freight rates must be published and made available to all, the treatment accorded individual shippers does not substantially affect the over-all competitive picture. But the fact that competing carriers may not be able to lower rates to an individual shipper in no way negatives the "stifling effect * * * on competition" of appellants' restrictive agreements. In fact it aggravates it. For unless competitors make a general reduction of rates or improvement in service for all shippers in the area, they

are precluded from obtaining any share of the market for transportation services covered by these routing clauses. Moreover, if they make such a reduction in rates or improvement in services, appellants could automatically retain the business by the simple expedient of matching such improvements. Here, as in *International Salt*, the effect of the tying clauses has been "to foreclose competitors from * * * [a] substantial market" (345 U. S. at 609):[19]

3. Appellants argue (Br. 37–41), that these traffic clauses repeatedly have been judicially upheld as neither in restraint of trade nor otherwise unlawful. But the cases they cite are inapposite to the present issue under the Sherman Act. Several involve construction of state antitrust statutes or the Interstate Commerce Act, while others turn upon the interpreta-

[19] The restraining effect of these traffic clauses is not limited solely to the produce of the lands sold or leased by appellants. It also includes manufactures from such produce, and, in the case of appellants' oil and gas and coal land lessees, all incoming freight destined for use in the territory of which the leased lands are a part (R. 203–207). Indeed, these latter lessees are required to ship via Northern Pacific's lines commodities from *adjacent* lands in which the lessee has an interest (R. 203–204). And even without this contractual restraint, those lessees who have leased even-number sections to "fill out" their grazing, timber or mineral holdings are, practically speaking, required to ship the entire produce or manufactures from these intermingled holdings over Northern Pacific's lines, in view of the difficulty, if not impossibility, of segregating the produce of the Northern Pacific lands from that of others (see, e. g., depositions of Warren Woodson, p. 8; and of Wallace Ulmer, pp. 8, 10). Appellants have even required some timber and other vendees to offer the products of the lands to those manufacturers who agree to ship via Northern Pacific (R. 206).

tion of a single contract in which the routing clause was the moving consideration for unusual acts performed by the other party to the contract. The one pertinent Sherman Act case cited (Br. 38–39), *United States* v. *Reading Co.*, 253 U. S. 26, condemned traffic clauses of the type here involved.[20]

Appellants also rely on the "antiquity" of the traffic clauses and the difficulties encountered by the railroad industry in meeting the competition of truck, water, and pipe lines (Br. 36–37, 41). Neither argument can justify the clear violation here involved.[21] See *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 149–150; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 220–222; *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 344–345 (D. Mass.), affirmed, 347 U. S. 521.

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[20] In the *Reading* case, the Court condemned a series of leases which sought to limit the shipment of coal to specified rail routes (p. 55): "* * * Since this [traffic] covenant was resorted to as a part of the scheme to control the mining and transportation of coal, which is condemned as unlawful in this opinion, the decree on the District Court enjoining the lessors and the other defendants herein from attempting to enforce such covenants will be affirmed." It did sustain one traffic clause where the particular contract provided for reciprocal benefits to the shipper and carrier.

[21] Appellants' reliance on alleged competition difficulties with the trucking and other transportation industries is unwarranted on several other grounds. Many of their routing restrictions antedate the emergence of this new competition, and are equally applicable to other railroads. Although appellants refer to the difficulties in meeting the competition of other transportation forms, they fail to indicate how traffic clauses giving them priority in the business at equal rates will aid them in meeting such competition.

B. THE CONTRACTS INVOLVED IMPOSE AN UNREASONABLE RESTRAINT ON TRADE SINCE THEY DIRECT THE COURSE OF TRADE NOT ON THE BASIS OF COMPETITIVE MERIT BUT BY FORCE OF THE APPELLANTS' OWNERSHIP OF THE LAND

Not only are appellants' traffic clauses illegal under the principles of the tying cases, but the restraints imposed are unreasonable on their face under other settled antitrust concepts.

In *Fashion Originators' Guild* v. *Federal Trade Commission,* 312 U. S. 457, 465, this Court held that a scheme which had as its purpose the suppression of competition from the sale of unregistered textiles and copied designs violated the policy of the Sherman Act because, among other things, "it narrows the outlets to which garment and textile manufacturers can sell and the sources from which retailers can buy." In the light of that purpose and effect, the Court held that the Commission correctly had refused to consider the reasonableness of the methods used to accomplish the unlawful objective. In *Associated Press* v. *United States,* 326 U. S. 1, this Court held that by-laws, which prohibited all AP members from selling news to non-members and granted the members power to impose restrictive conditions upon admission to membership of non-member competitors, were on their face unreasonable restraints of trade, because they were designed to stifle competition in the newspaper publishing field. The Court pointed out (p. 15) that "[w]hile it is true in a very general sense that one can dispose of his property as he pleases, he cannot 'go beyond the exercise of this right, and by contracts

or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.' "

Similarly, in the instant case appellants' "forbidden ends" (*Times-Picayune,* p. 622) patently are to preclude appellants' competitors from gaining access to the transportation market represented by appellants' vendees or lessees, and to prevent shippers from patronizing such competitors. Appellants' traffic clauses therefore "unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade" because they arbitrarily narrow both "the outlets to which * * * [competing carriers] can sell and the sources from which * * * [shippers] can buy." The clauses thus embody the very vices which led this Court in *Fashion Originators' Guild* and *Associated Press* to condemn the restraints there involved as unreasonable on their face. And, unlike *Times-Picayune* (pp. 622–623), no "legitimate business aims" motivate appellants;[22] nor do the contracts disclose any benefit to vendee or lessee which could be regarded as *quid pro quo* for the routing restraint.

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[22] In their summary of argument (Br. 18) appellants make the bald assertion that the primary function of the traffic clauses "is to take the place of solicitation of the traffic of those using appellants' lands * * *." This argument was not advanced below, and is unsupported here; it could be made by every seller in the "tying" situation and, absent some showing of unusual circumstances, does not constitute a "legitimate" business purpose.

The contracts for sale of timber and timber land suffer from a further infirmity. With respect to such products appellants seek to control the choice of transportation facilities by the vendee and, in some timber sales, by his successors and assigns (R. 207), even though all title has passed to the vendee. In addition, some timber contracts control the shipment of other products manufactured from the timber, although appellants never had title to such products (R. 207). This Court has held that a distributor of a trade-marked, copyrighted, or patented article, upon parting with title to his property, may not lawfully limit the price at which or the persons to whom the purchaser may resell. *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 721; *United States* v. *Masonite Corp.*, 316 U. S. 265, 278; *Interstate Circuit* v. *United States*, 306 U. S. 208, 220. We submit that once appellants have parted with title to their property, they are similarly precluded from controlling the purchaser's subsequent choice of facilities by which the products of the land or the timber are to be transported. For, here also, appellants' contracts "* * * unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade." *United States* v. *Bausch & Lomb Co., supra*, at 722.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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APPENDIX

Pertinent Excerpts From Testimony of Deposition Witness

McWhorter (p. 45):

Q. So it would not make much difference whether or not you leased from them [N. P.]?

A. No, I wouldn't say that. I valued those leases.

Q. You said it was a very minor portion.

A. Well, I valued the Northern Pacific leases for the simple reason they were intermingled with my other leases, and you have to have control over the area before you can graze it.

Mallett (p. 13):

Q. Now, you were asked on Direct if this land you leased from the Northern Pacific filled out the block of land altogether that you controlled, is that true?

A. That is true.

Q. And so this Northern Pacific land you leased was pretty important to your range, wasn't it?

A. Well, it just kept from building fences if we could lease it.

Q. Pretty expensive to build fences, isn't it?

A. Yes.

Q. It was important?

A. Yes, it's important because it's important to get a block of land together.

Q. Because it's every other section?

A. Yes.

Magelssen (p. 14):

Q. Now these lands that you leased from the N. P. were pretty important to you and your range, weren't they?

A. Some of them; yes, some of them with water holes. In that county we lease land that will control water and a lot of these N. P. sections controlled water.

Q. In other words, you wouldn't have bought them unless you thought they were important to you?

A. No, it's pretty essential to have water.

Lange (pp. 16–17):

Q. I think the word "intermingled" was used in your direct examination. What do you mean by that? Do you mean that the N. P. land is intermingled with the other?

A. Well, they are odd numbered sections.

Q. That land is important to your home range, is it?

A. Well, all range is important, as the situation is there, and if the N. P. land was out, the Reclamation land would be valueless, and the Reclamation land would be in the same position if the other land was out, the land is divided up that way.

Q. It is so intermingled, that you have to take it, is that it?

A. Yes, you have to have both of them, it is not practical if either one of the leases is out of the picture, one without the other.

Pauly (p. 17):

Q. Now, the lands you leased from the Northern Pacific was very nominal, wasn't it, in comparison?

A. In comparison to what we had? Yes, sir.

Q. But it was intermingled with your land, is that right?

A. Yes, sir.

Q. Was the Northern Pacific land too important to you when you were raising sheep?

A. Well, naturally I wouldn't lease it for the fun of it.

Q. But I am still wondering, since you had a hundred thousand acres, if 15,000 acres was too important?

A. It was, for the simple reason that it's intermingled with other lands, and it's pretty hard to graze one without the other, and to avoid a lot of hard feelings and headaches and the like of that, why we'd lease those sections. * * *

Olson (p. 24):

Q. Now, you testified on direct that this portion of the land you leased from the N. P. was very essential to your home range?

A. Well, I wouldn't have wanted it cut out.

Q. You wouldn't care to have them cut it out; is that it?

A. No, I wouldn't, because it works right in with the rest of the range. It is very essential in that country. Most of the range is very essential for the time when we use it. You start to lamb in the spring, and you have to have the early spring range, and you have to have a little later range, and you have to line that stuff up, oh, sometimes at least the middle of May before you can leave there, and you have to have a lot of range to do it with.

Simpson (p. 8):

Q. You stated that you still had some land under lease from the Northern Pacific and that previous to that you had bought some land from the Northern

Pacific. I would like to know if the land you leased and the lands you bought which you had previously leased from the Northern Pacific was important to your range?

A. Yes, it was.

Q. It helped fill out your range in other words?

A. Yes, sir.

Haughian (p. 10):

Q. Now, this Northern Pacific land that you leased is intermingled with your range pretty much, isn't it?

A. Yes.

Q. It was pretty important that you have that for your range?

A. Yes.

Q. You wouldn't want to go around every other section would you?

A. No, sure it would be important. I think we in the sheep business should have sense enough to know that. * * *

Bradshaw (pp. 7–8):

Q. Now, these Northern Pacific leased lands you stated on direct were intermingled with your home range of the 50,000 acres that you control, are they important to you?

A. Oh, yes, part of the unit.

Q. And if you didn't have those your range would be cut down considerable, wouldn't it?

A. Well, it would be cut down in proportion to the acreage.

Q. It would be kind of confusing if someone else owned those lands intermingled with your range, wouldn't it?

A. Yes, it would.

Q. So, in other words, they are pretty important to you aren't they, those lands that you bought from the—leased from the Northern Pacific now and did lease?

A. Yes.

Woodson (pp. 7–8):

Q. Your Northern Pacific lands are intermingled with your range, and were they intermingled with your range back in the Twenties?

A. Before 1912 was the first time we wintered out there and we had 120 acres of stripped land and gradually after that settlement we acquired more range because we had to keep other fellows from getting it. I never kept the Northern Pacific land separate from the other range at all. Blocked it up as we could.

Q. So the Northern Pacific lands were pretty important to your range as a whole, weren't they?

A. Yes, they were.

Denecke (pp. 19–20, 39):

Q. Now, you stated that these Forest permit lands and N. P. leased lands are intermingled, and that they make one block. Now, if you didn't have this N. P. leased land and only had Forest permit land, you could only graze 1600 sheep, is that right, you wouldn't be able to feed 1800 additional sheep?

A. That's right.

Q. So the N. P. lease is very important to you, isn't it?

A. Yes.

Q. If you didn't have it, it would just cut you more than half?

A. More than half, yes.

* * * * *

Q. * * * This N. P. land was very important to all members of this Madison Valley Grazing Association, wasn't it and isn't it?

A. It is important, yes, and was important at that time.

Williamson (pp. 8–9):

Q. Why did you finally lease it [N. P. land]?

A. Just to protect our holdings.

Q. Because of Homesteaders?

A. If you didn't lease it somebody else would probably come in and lease it and take it away from you and break up your range.

Q. So the Northern Pacific leased land you finally acquired was very important to your range?

A. Yes, that is true.

Q. If you didn't have it you wouldn't have your range because it would be all broken up?

A. That's right.

Dunnett (pp. 16–17):

Q. So you would say that about 500 of those sheep would probably have grazed on the N. P. land; is that right?

A. Well, I couldn't—that would be hard to define that.

Q. I mean, you probably know, raising sheep as long as you have, how many acres of land a sheep will graze over during the summer?

A. Well, what we had on there was only on that particular part probably in the—the Northern Pacific lands lie on the south slope—they wouldn't be there for a month on the lands of the Northern Pacific. It dries out a little early, and then we went higher up, but it was very essential; it was early feed.

Q. And it was very important because it was early feed on the south side?

A. Yes, it was important.

McWhorter (p. 61):

Q. Well, that is correct, under the Act of Congress of 1864, the land was all odd sections; and your intervening lands—put it this way: You spoke of your lands being intermingled. Well, were there some cases where the sections that you had otherwise, adjoined the N. P. sections?

A. Solid blocks of it, in fact, the N. P. sections intermingled only with a minor proportion of my range.

Q. You said you did regard the N. P. lands as important. Just why did you regard the N. P. lands as important?

A. To facilitate grazing on the entire area. It would be very difficult, almost impossible, to graze a block of four sections, for example, if the Northern Pacific owned two of them and someone else owned two of them. It would be very difficult to graze them.

Ulmer (pp. 9–10):

Q. But in your own case you have 48 sections in addition to the 15 or 20 sections you got from the Northern Pacific?

A. Yes, sir, I don't have any.

Q. You did in former years?

A. Yes, sir.

Q. Was that land important to your range?

A. Yes, sir.

Q. Did you buy it to fill out your range?

A. You mean the Northern Pacific land?

Q. Leased land?

A. I bought it because to have security as far as range was concerned. Yes, it was important to me.

Q. And you needed that to graze your sheep on?

A. That's right.

Carey (p. 13):

Q. Now, we talked quite a bit about leases that you had from the N. P. in conjunction with your other lands that you own and lease elsewhere. I would like to ask you: This N. P. land you stated on direct was intermingled with your other property. You think that N. P. land is pretty important to fill out your holdings, isn't it, so to speak?

A. Naturally.

Q. You wouldn't like to see it leased to somebody else or lost to you?

A. No, we wouldn't.

Davidson (p. 10):

Q. Now, you testified on Direct that during all this time the Northern Pacific land was practically either one-half or exceeded one-half of all the land you had under your control?

A. I think it really exceeded more than half of the rest of the land I had.

Q. And then you testified that this was in all one range?

A. Practically, it's stretched out quite a little.

Q. So if the Northern Pacific land exceeded by one-half all the other land you had under your control was that a pretty important part of your range, was this Northern Pacific leased land necessary to you in your business?

A. Yes, it was to hold my range.

Q. You wouldn't have wanted to have that lease wiped right out from under you would you?

A. No, I wouldn't.

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